

(16,576.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 105.

KODMAN M. PRICE, MADELINE PRICE, GOUVERNEUR
PRICE, FRANCIS PRICE, AND E. TRENCHARD PRICE,
PLAINTIFFS IN ERROR,

vs.

ANNA M. FORREST AND CHARLES BORCHERLING.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE
OF NEW JERSEY.

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a UNITED STATES OF AMERICA, ss :

[The Seal of the U. S. Circuit Court, Dist. of New Jersey.]

The President of the United States to the honorable the judges of
“the court of errors and appeals in the last resort in all causes”
in the State of New Jersey, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of errors and appeals in the last resort in all causes, before you, being the highest court of the said State in which a decision could be had, in the said suit between Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price, and E. Trenchard Price, appellants and plaintiffs in error, and Anna M. Forrest and Charles Borchering, the defendants in error, wherein was drawn in question the validity of a statute of and of an authority exercised under the United States and the decision was against their validity, and wherein was drawn in question a title, right, privilege, and immunity claimed by the plaintiffs in error under a statute of the United States and the decision was against the title, right, privilege, and immunity specially set up and claimed by the plaintiffs in error under such statute, a manifest error hath happened, to the great damage of the said Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price, and E. Trenchard Price, the said appellants and plaintiffs in error, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to

b the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the sixth day of May next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the seventh day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

S. D. OLIPHANT,

*Clerk of the Circuit Court of the United States for the
District of New Jersey, Third Circuit.*

Allowed by—

ALEX. T. MCGILL,

*Chancellor, Presiding Judge of the
Court of Errors and Appeals in the Last
Resort in All Causes in New Jersey.*

c The Answer of the Judges of the Court of Errors and Appeals in the Last Resort in All Causes in the State of New Jersey within Named.

The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Supreme Court of the United States in a certain schedule to this writ annexed, as within commanded.

ALEX. T. MCGILL,

Chancellor, Presiding Judge of the Court of Errors and Appeals in the Last Resort in All Causes in New Jersey.

d [Endorsed:] Supreme Court of the United States. Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price, and E. Trenchard Price, plaintiffs in error, vs. Anna M. Forrest and Charles Borchering, defendants in error. Writ of error to the court of errors and appeals of the State of New Jersey. Returnable the sixth of May, 1897.

e The Court of Errors and Appeals in the Last Resort in All Causes in New Jersey.

ANNA M. FORREST and CHARLES BORCHERLING, Complainants	}
and Respondents,	
and	
RODMAN M. PRICE, MADELINE PRICE, GOUVERNEUR PRICE, FRANCIS Price, and E. Trenchard Price, Defendants and Appellants.	}

To the honorable the Supreme Court of the United States :

Your petitioners, the defendants, Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price, and E. Trenchard Price, respectfully show :

f That upon the fifth day of July, eighteen hundred and ninety-four, the bill of complaint herein was filed in the court of chancery of New Jersey, alleging that one Samuel Forrest, then deceased, had recovered a judgment in the supreme court of New Jersey against Rodman M. Price, also deceased, in his lifetime, for the sum of seventeen thousand dollars of debt and seventy-eight dollars and four cents of costs, on the second day of June, eighteen hundred and fifty-seven ; that the execution had never been made of said judgment ; that the complainant Anna M. Forrest, as widow and administratrix of said Samuel Forrest, deceased, had filed her bill of complaint in the court of chancery of New Jersey against said Rodman M. Price, now deceased, to enforce said judgment against property believed to belong to said Rodman M. Price ; that pending said suit the complainant therein had discovered that certain moneys were about to be paid to the said Rodman M. Price by the officers of the Department of the Treasury of the United States, being a sum found to be due him from the Government of the United States by an accounting lately had between him and it ; that

she thereupon and on or about the ninth day of August, eighteen hundred and ninety-two, and after answer in the cause by said Rodman M. Price, filed a petition therein and prayed an injunction out of the said court restraining said Price from collecting said moneys and praying the appointment of a receiver and a decree that said Price endorse and turn over to said receiver the drafts or other means of procuring said money; that such an order was made by the court of chancery and served upon said Price, and that nevertheless thereafter he collected certain sums of said money from the United States; that the said Charles Borchertling was appointed, by the court of chancery in said cause, receiver, in accordance with the prayer of said petition; that an attachment for contempt was issued by said court against said Price for his failure to obey the order of said court, but before it was executed, and about the eighth day of June, eighteen hundred and ninety-four, he died; that no will of his had been presented for probate nor letters of administration issued on his estate; that there still
g remained in the Treasury of the United States, of moneys payable by the United States to the said Rodman M. Price, the sum of about twenty-three thousand dollars, and that these petitioners, the children of the said Rodman M. Price, were endeavoring to collect the same from the United States Treasury, and the bill prayed, amongst other things, a revival of the said original suit, an injunction against these petitioners, the defendants to said bill, and their attorneys from making any demand upon or application to the Government of the United States or the Secretary of the Treasury of the United States or any officer of said Treasury or from receiving from the United States or said Secretary of the Treasury or any officer thereof any part of the money still remaining in the Treasury of the United States and which was awarded to said Rodman M. Price as aforesaid, and that these petitioners be decreed to pay to said receiver, to be by him disposed of under the orders of the court of chancery, and that these petitioners make discovery of all property of said Rodman M. Price.

To this bill of complaint these petitioners, Madeline Price and Gouverneur Price, on the twenty-second day of September, eighteen hundred and ninety-four, and these petitioners, Francis Price, Rodman M. Price, and E. Trenchard Price, on the twenty-seventh day of November, eighteen hundred and ninety-four, filed pleas to the said bill of complaint, which pleas were, by decree of the said court of chancery made on the twenty-ninth day of July, eighteen hundred and ninety-five, overruled and these petitioners ordered to answer the bill of complaint; and thereupon these petitioners ap-
h pealed from said decree of the chancellor to the court of errors and appeals in the last resort in all causes in New Jersey, which court afterwards and by its decree dated on the second day of March, eighteen hundred and ninety-six, affirmed the said decree of the court of chancery and remitted the record thereof to the said court of chancery, with directions to proceed therein according to law; and thereupon, by its decree bearing date the second day of March, eighteen hundred and ninety-six, the said

court of chancery, by its decree bearing date on the sixteenth day of June, eighteen hundred and ninety-six, the said decree of the court of errors and appeals was made the decree of the said court of chancery; and thereupon and afterwards, on the twenty-fourth day of June, eighteen hundred and ninety-six, these petitioners filed their answer in said court of chancery to the said bill of complaint, in which, after admitting the filing of the original bill of complaint, that moneys were drawn from the Treasury to the amount named in the bill; that said Rodman M. Price, deceased, did not comply with the order of the court of chancery; that no will of his had been presented for probate, so far as they knew, nor letters of administration issued upon his estate. They alleged ignorance as to whether he had received the moneys named and alleged that he left no estate, and that no property, real or personal, had come to them from him, and admitted their effort to collect the moneys in question from the Treasury of the United States, and asserted their right to do so, and set forth that they are entitled to receive from the United States the moneys therein remaining which are part and parcel of the moneys awarded by the act of Congress set forth in the bill of complaint as original takers as the heirs of the said Rodman

M. Price, deceased, which act of Congress, referred to in the bill of complaint and set out in said answer, was an act of Congress approved February twenty-third, eighteen hundred and ninety-one, and was entitled "An act for the relief of Rodman M. Price" and was in the words and figures following, to wit:

"An act for the relief of Rodman M. Price.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby authorized and directed to adjust upon principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy, and acting navy agent at San Francisco, California, crediting him with the sum paid over and receipted for by his successor, A. M. Van Nostrand, acting purser, January fourth, eighteen hundred and fifty, and pay to said Rodman M. Price, or his heirs, out of any money in the Treasury, not otherwise appropriated, any sum that may be found due upon such adjustment.

"Approved, February 23, 1891."

And the answer further alleged that as to all the moneys not actually received by the said Rodman M. Price, deceased, from the Government of the United States upon such adjustment under said act actually remaining unpaid to said Rodman M. Price at his death these petitioners, defendants, heirs of said Rodman M. Price, deceased, therein referred to, were entitled to thereunder by special designation in said act as his heirs, and that the said moneys so remaining unpaid were in nowise chargeable with the debts and liabilities of the said Rodman M. Price, deceased, or to any of his

j creditors, and that all such moneys so unpaid to him in his lifetime were payable by the Government of the United States directly and exclusively to these petitioners out of any moneys in the Treasury and not otherwise appropriated and for the benefit of these petitioners respectively without any claim whatsoever upon the same by the complainant; and after reciting the facts which gave rise to the passage of said act of Congress and the circumstances attending it and the opinion of the Attorney General thereon and the adjustment between the Secretary of the Treasury and the said Rodman M. Price of the amount due him thereunder and a statement that the said Rodman M. Price, deceased, in his lifetime actually received four drafts from the Government of the United States and the money therefor, amounting to forty-five thousand two hundred and four dollars and eight cents (\$45,204.08), and that the balance thereof, which is part of said seventy-five thousand dollars (\$75,000) after deducting any other sum actually paid thereon to said Rodman M. Price in his lifetime by the Government of the United States, said answer alleged that these petitioners, defendants, being the heirs of the deceased, were entitled to as aforesaid under and by virtue of the said act of Congress and adjustment aforesaid and prayed to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

That afterwards and on or about the twenty-fifth day of June, eighteen hundred and ninety-six, said cause was duly argued before the court of chancery at Jersey City, in said State of New Jersey, on bill and answer, and on or about the twenty-fifth day of June, eighteen hundred and ninety-six, a decree was made therein decreeing that the said defendants and each of them be, and they thereby were, perpetually enjoined and restrained from making any demand upon or application to the Government of the United States or the Secretary of the Treasury of the United States or any officer of said Treasury or from receiving from the United States or its said Secretary of the Treasury or any officer thereof any part of the money remaining in the Treasury of the United States at the time of the filing of the said bill of complaint and which was awarded to Rodman M. Price, deceased, as in said bill stated, or now there remaining, and that said defendants likewise pay to the complainants or their solicitors their costs to be taxed in the cause.

k And thereupon these petitioners appealed from said last-named decree of the chancellor to the court of errors and appeals in the last resort in all causes in New Jersey by their notice of appeal bearing date the second day of November, eighteen hundred and ninety-six, and filed in the court of chancery, and by their petition in the court of errors and appeals in the last resort in all causes in New Jersey on the eighteenth day of November, eighteen hundred and ninety-six, in accordance with the practice in the said court, and said case was submitted by the parties thereto to the said court of errors and appeals in the last resort in all causes in New Jersey on the second day of December, eighteen hundred and ninety-six; and thereupon afterwards the said court of errors and appeals in

the last resort in all causes in New Jersey by its decree bearing date the eleventh day of January, eighteen hundred and ninety-seven, ordered, adjudged, and decreed that the said decree of the chancellor, from which appeal to said court was taken, be, and the same was thereby, in all things affirmed, with costs, to be taxed, and that the record be remitted to the court of chancery to proceed therein and therewith according to law.

And the petitioners aver that the said the court of errors and appeals in the last resort in all causes in New Jersey is the highest court in which a decision in said suit could be had, and that said last-named decree was a final decree in the said suit, and that there was drawn in question the validity of the said statute of the United States, namely, the act entitled "An act for the relief of Rodman M. Price," approved February 23rd, 1891, above cited, and also the validity of an act of Congress of the United States, namely, section 3477 of the Revised Statutes of the United States, and the decision is against their validity, and wherein was drawn in question a title, right, privilege, and immunity claimed by these petitioners under said statutes of the United States, in that thereunder they claim that they and they only were entitled to receive the said moneys so remaining in the Treasury of the United States, and that the said complainants were not entitled to receive the same, and that any assignment thereof decreed by said court in said proceeding was null and void under said acts, and any decree interfering with the right of these appellants to collect the said moneys under said acts was contrary to said statutes and null and void, and the decision was against the said title, right, privilege, and immunity so set up and claimed by these appellants under said statutes.

Wherefore these petitioners, conceiving themselves aggrieved by said final decree, respectfully pray that the same may be examined and reversed by this court, and that to that end a writ of error may issue, to be directed to the said the court of errors and appeals in the last resort in all causes in New Jersey, to bring up to this court the said decree, record, and proceedings aforesaid, with all things touching and concerning the same, that, the same being inspected, this court may cause further to be done to correct that error what of right and according to the laws and customs of the United States should be done.

Dated April sixth, 1897.

FLAVEL McGEE,

Solicitor for and of Counsel with Petitioners.

April seventh, A. D. eighteen hundred and ninety-seven, petition allowed.

ALEX. T. MCGILL,

*Chancellor, Presiding Judge of the Court of
Errors and Appeals in the Last Resort in
All Causes in the State of New Jersey.*

[Endorsed:] 4-77. The court of errors and appeals in the last resort in all causes in New Jersey. Anna M. Forrest

and Charles Borchering, compl'ts & resp'nd'nts, and Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price, and E. Trenchard Price, def'ts & app'lnts. Petition for writ of error. Flavel McGee, def'ts' sol'r. Filed April 10, 1897. George Wurts, clerk.

6 UNITED STATES OF AMERICA, ss:

To Anna M. Forrest and Charles Borchering, Greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the sixth day of May next, pursuant to a writ of error filed in the clerk's office of the court of errors and appeals in the last resort in all causes in the State of New Jersey, wherein Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price, and E. Trenchard Price are plaintiffs in error and you, Anna M. Forrest and Charles Borchering, are defendants in error, to show cause, if any there be, why the decree in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Alexander T. McGill, chancellor, presiding judge of the court of errors and appeals in the last resort in all causes in the State of New Jersey, this seventh day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal of the Secretary of the State of New Jersey.]

ALEX. T. MCGILL,
*Chancellor, Presiding Judge of the Court of Errors and
Appeals in the Last Resort in All Causes in the
State of New Jersey.*

p [Endorsed :] 4-77. Original. Supreme Court of the United States. Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price, and E. Trenchard Price, plaintiffs in error, vs. Anna M. Forrest and Charles Borchering, defendants in error. Citation to defendants in error. Filed April 13, 1897. George Wurts, clerk. Flavel McGee, sol. for and of counsel with plaintiffs in error. Without waiver of any legal exception to the issue thereof. Service on the defendants in error of this citation and of a copy of the writ of error in the case acknowledged this 13th day of April, 1897. Cortlandt & Wayne Parker, attorneys of defendants in error.

q Supreme Court of the United States.

RODMAN M. PRICE, MADELINE PRICE, GOVERNEUR Price, Francis Price, and E. Trenchard Price, Plaintiffs in Error,	} Assignment of Errors.
vs.	
ANNA M. FORREST and CHARLES BORCHERLING, Defendants in Error.	

Afterwards, that is to say, on the sixth day of May, eighteen hundred and ninety-seven, in the Supreme Court of the United States,

comes the said Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price, and E. Trenchard Price, plaintiffs in error, by Flavel McGee, their solicitor, and say that in the record and proceedings aforesaid and in the decree aforesaid given in the court of errors and appeals in the last resort in all causes in New Jersey there is manifest error in this, to wit:

That said court of errors and appeals in the last resort in all causes in New Jersey decreed that the decree of the chancellor from which appeal to said court was taken be, and the same was thereby, in all things affirmed, with costs, to be taxed, whereas by law said court should have decreed that said decree of the chancellor be reversed with costs, to be taxed.

There is also manifest error in this, to wit, that said court of errors and appeals decreed that said decree of the chancellor which
 r decreed that said defendant, these plaintiffs in error, and each of them be, and they thereby were, perpetually enjoined and restrained from making any demand upon or application to the Government of the United States or the Secretary of the Treasury of the United States or any officer of the said Treasury or from receiving from the United States or its said Secretary of the Treasury or any officer thereof any part of the money remaining in the Treasury of the United States at the time of filing the said bill of complaint, and which was awarded to said Rodman M. Price, as in said bill stated or there remaining—

Whereas by law said court should have decreed that said decree be reversed, said final injunction dissolved, and said bill of complaint dismissed.

There is also manifest error in this, to wit, that the said court of errors and appeals decreed that said decree of the chancellor, which decreed that these plaintiffs in error pay to the complainants or their solicitors their costs, to be taxed—

Whereas by law said court should have decreed that said decree be reversed, and that said complainants pay to these plaintiffs in error their costs of said suit.

There is also manifest error in this, to wit, that said court of errors and appeals by said decree decided that under the act of Congress entitled "An act for the relief of Rodman M. Price," approved
 s February 23, 1891, and which is set out in full in the answer filed by these plaintiffs in error in the court of chancery of New Jersey, *pro ut* the case, the money therein mentioned was intended to benefit the estate of Rodman M. Price and to be within the reach of his creditors, and that there heirs of said Rodman M. Price, deceased, were not thereby personally intended to be the beneficiaries of the United States by way of gift or gratuity to them as such—

Whereas by law said court should have decided that under said act the money therein mentioned was intended to be for the benefit of said Rodman M. Price, now deceased, if and in so far as the same was paid to him during his life and for the benefit of his heirs as original takers in so far as the same was not paid to him during his life.

There is also manifest error in this, to wit, that said court of errors and appeals by said decree decided that the heirs of said Rodman M. Price, deceased, were subject to the jurisdiction of said court in the premises, and that that court can treat them as if they were in the possession of said money in order to compel them to assign it to the receiver appointed in said suit or to give effect to such assignment to him by operation of law—

Whereas by law said court should have decided that these plaintiffs in error, as such heirs of Rodman M. Price, were original beneficiaries under said act and were not subject to the jurisdiction of the court for the enforcement of the judgment against the said Rodman M. Price, deceased, and could not be compelled by said court to assign it to a receiver appointed in said suit or to give an effect to such an assignment.

There is also manifest error in this, to wit, that said court of errors and appeals by said decree decided that an assignment of the claim of these plaintiffs in error to said moneys made by the order or decree of said court against the will of these plaintiffs in error and without the formalities required by section 3477 of the Revised Statutes of the United States is valid—

Whereas by law said court ought to have decided that an assignment so made without said formalities is void.

There is also manifest error in this, to wit, that said court of errors and appeals by said decree decided that the receiver appointed in said suit in equity took title to said moneys from said Rodman M. Price, deceased, or the defendants, these plaintiffs in error, by operation of law, and that the title thereto of said Rodman M. Price, deceased, or the defendants, these plaintiffs in error, was vested in him by operation of law—

Whereas by law said court ought to have decided that no title could be legally vested in him by decree of said court, but that any assignment or transfer so made would, under section 3477 of the Revised Statutes of the United States, be void.

There is also manifest error in this, to wit, that said court of errors and appeals by said decree decided that a transfer of said moneys made to said receiver against the will of the plaintiffs in error and without the formalities required by section 3477 of the Revised Statutes of the United States was a transfer made by operation of law and valid—

Whereas by law said court ought to have decided that a transfer so made would not be by operation of law and was void.

There is also manifest error in this, to wit, that these plaintiffs in error in and by their said answer in said cause claimed, under said act therein recited, entitled "An act for the relief of Rodman M. Price," that they were entitled to the balance of the said moneys in the Treasury of the United States therein mentioned as original takers under said act, and said court of errors and appeals by said decree decided that they were not such original takers under said act—

Whereas by law said court ought to have decided that they were.

There is also manifest error in this, to wit, that these plaintiffs in error in said cause specially set up and claimed, under said act entitled "An act for the relief of Rodman M. Price," in their said answer recited, a right under said statute to receive the
 v moneys therein mentioned from the United States, and the said decision of the said court of errors and appeals was against said right so specially set up and claimed by these plaintiffs in error.

And there is also manifest error in this, to wit, that in said suit these plaintiffs in error, under section 3477 of the Revised Statutes of the United States, specially set up and claimed that no transfer or assignment of their said claim for said moneys upon the United States or any part thereof could be validly ordered by said court against their will nor without the formalities mentioned in said section 3477 of the Revised Statutes of the United States, and the said court of errors and appeals by its said decree decided against said right so specially set up and claimed by these plaintiffs in error.

Wherefore the said plaintiffs in error pray that the decree aforesaid, by reason of the errors aforesaid and for other errors appearing in the record and proceedings aforesaid, may be reversed, annulled, and for nothing holden, and that the said the plaintiffs in error may be restored to all things they have lost on occasion of said decree.

FLAVEL MCGEE,

Attorney for & of Counsel with the Plaintiffs in Error.

Approved:

ALEX. T. MCGILL,

Chancellor, Presiding Judge of the

Court of Errors & Appeals in the Last

Resort in All Causes in New Jersey.

w [Endorsed:] 4-77. Supreme Court of the United States, October term, 1896. Rodman M. Price and others, plaintiffs in error, *vs.* Anna M. Forrest *et al.*, defendants in error. Assignment of errors. Flavel McGee, attorney for & of counsel with the plaintiffs in error. Filed April 10, 1897. George Wurts, clerk.

x New Jersey Court of Errors and Appeals.

Between—

RODMAN M. PRICE ET ALS., Appellants,
 and

ANNA M. FORREST, Administratrix of Samuel Forrest, Deceased,
et al., Respondents. }

On appeal.

State of the Case.

Messrs. McGee, Bedle & Bedle, solicitors of appellants.

Messrs. Cortlandt & Wayne Parker, solicitors of respondents.

1

In Chancery of New Jersey.

Between—

ANNA M. FORREST, Adm'x of Samuel Forrest, Deceased, Compl't, and RODMAN M. PRICE, Def't.	}	Bill for Revivor and Relief & Order for Inj.
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Cortlaudt & Wayne Parker, sol'rs for compl't.

Filed July 5, 1894.

To the Honorable Alexander T. McGill, chancellor of the State of New Jersey :

Humbly complaining sheweth unto your honor your oratrix, Anna M. Forrest, widow and administratrix of Samuel Forrest, deceased, of Charlestown, Virginia, and Charles Borchering, of the city of Newark, county of Essex and State of New Jersey, the said Anna M. Forrest, administratrix, as aforesaid, filing this bill of complaint by permission of the court as a bill of revivor and original bill in the nature of a supplemental bill to the bill of complaint, filed by her as hereafter stated, against Rodman M. Price, of Bergen county, New Jersey, now deceased, jointly with his wife, Matilda C. S. Price and Francis Price, which bill was filed on or about the thirtieth day of May, eighteen hundred and seventy-four, and the said Charles Borchering ap-

2 pointed receiver in said cause, of the goods and chattels, rights, credits, property and effects, of the said Rodman M. Price, joining with her the said administratrix, in the prayer hereof.

And thereupon your oratrix administratrix, as aforesaid, alleges and shows that on or about the day and year aforesaid, your oratrix filed as aforesaid in this court, her bill of complaint in which she alleged that about the second day of June, eighteen hundred and fifty-seven, in the supreme court of New Jersey, said Samuel Forrest, in his lifetime, did recover against said Rodman M. Price a debt of seventeen thousand dollars, and also seventy-eight dollars and four cents costs; that about the seventh day of November in said year, said Samuel Forrest sued out a writ of *feri facias* upon said judgment, but the same was returned unpaid and unsatisfied; that said Samuel Forrest departed this life about the seventh day of November in the year eighteen hundred and sixty intestate, the said judgment still remaining unpaid and unsatisfied that about the twenty-second day of January, eighteen hundred and seventy-four, administration of the goods and chattels, rights, and credits, which were of the said Samuel Forrest, deceased, in his lifetime, was granted to your oratrix by the then ordinary of this State, in the prerogative court thereof; that your oratrix shortly afterwards sued out of said supreme court against said Rodman M. Price, a writ of *scire facias*, to revive said judgment and commanded him to show cause why execution should not issue thereon; that about the fifteenth day of April, eighteen hundred and seventy-four, judgment was entered upon said writ that your oratrix should have her execution of the

said debt and costs with interest ; that on or about the fourteenth day of April, eighteen hundred and seventy-four, your oratrix sued and prosecuted out of said supreme court, a writ of *fieri facias* directed to the sheriff of the county of Bergen, commanding him that of the goods and chattels of said Rodman M. Price, defendant in his bailiwick, he should cause to be made said debt of seventeen thousand dollars and costs, and if sufficient

3 goods and chattels of said Price could not be found by him, then that the sheriff should cause the said sum to be made of the real estate, whereof defendant was seized on the said second day of June, eighteen hundred and fifty-seven, or at any time afterwards, in whose hands soever the same might be, and that he should have those moneys before said supreme court on the first Tuesday of June, then next ensuing, to render for the damages aforesaid ; that in said bill of complaint your oratrix set forth certain facts intended to show an interest to be possessed by the said Price in certain lands, and tenement- and other property in the county of Bergen, particularly set forth in said bill of complaint ; that there was also contained in said bill allegations intended to show the possession by said Rodman M. Price at the time of filing said bill of a claim for a large sum of money upon a judgment against Erasmus B. Keyes and Edmund M. Scott, also particularly set forth in said bill of complaint, and by said bill she alleged that she was informed and believed that the said Rodman M. Price, besides the aforesaid property had equitable things in action or other property to the amount of many thousand dollars, exclusive of all claim thereon, and all exemptions allowed by law, which your oratrix had been unable to reach by execution on your oratrix' said judgment ; that her bill of complaint in said case was not exhibited by collusion with the said Price, nor for the purpose of protecting his property against the claims of other creditors, but for the purpose of compelling payment and satisfaction of her own debt aforesaid, and your oratrix by said bill prayed discovery from the said Rodman M. Price, of all property, real or personal, whether in possession or action, belonging to him, with full particulars as to the same, and that the same might under the order of this court be appropriated to the payment of said judgment and the costs of said bill of complaint, and that some discreet and proper person might be appointed receiver

4 in this cause by this court to collect and take charge of the property, money and things in action that might be found to belong to the said Rodman M. Price or to which he might or could be in any way or manner entitled, either in law or equity, with power to convert the same into money, and with such other powers which are usually granted to receivers in similar cases ; and that the said Rodman M. Price might be enjoined and restrained by the order and decree of this court from assigning, transferring, or making any other disposition of the real estate and personal property to which he was in anywise entitled, and from receiving any moneys then due or to become due to him except where the same were held in trust and created by or the funds held in trust had proceeded from other persons than the said Rodman M. Price,

and enjoining him from selling, conveying, or in any manner recovering the said lands or selling the judgment therein described, and the process of subpoena and injunction was prayed by said bill of complaint addressed to the said Rodman M. Price as hereinabove stated, and also to Francis Price therein named, son, and Matilda C. S. Price, wife of the said Rodman, who were made defendants to said suit and alleged to be interested in property therein described and referred to, and alleged equitably to belong to the said Rodman M. Price, and such injunction was, on the filing of said bill granted, and still remains.

And your oratrix further shows unto your honor that on or about the fourth day of December, eighteen hundred and seventy-four, said Rodman M. Price, Matilda C. S. Price, his wife, and Francis Price filed their answer in this court to said bill in which said Rodman admitted the recovery of said judgment by the said Samuel Forrest, but alleged that the judgment was owned as he believed, by Erasmus B. Keyes, the person against whom the judgment in favor of said Price who was mentioned in said bill of complaint,

5 was obtained; that said Keyes had written to him years before said Forrest recovered the judgment against said Price, that he had paid said Forrest the whole of the claim on which said Forrest judgment was founded; that Keyes had a large amount of the assets of this defendant, years before Forrest recovered his judgment; that at the time of said Forrest bringing his suit, the said Price had already sued said Keyes for the money so recovered in the name of said Price in and by the said judgment against Keyes in the State of New York; that by reason of hostile relations between said Keyes and said Price, the latter was unable to establish the payment of the claim of said Forrest and was obliged to let said Forrest suit go by default, and he insisted that the said Keyes by his letters was estopped from alleging that there was nothing due on the said Forrest judgment, and the other defendants allege that they believe his statement to be true.

Said Price further answered that his father Francis Price, purchased the lands mentioned in the bill of complaint, though he acted therein as his father's agent; that the defendant, with his father's consent, occupied said premises, but the purchase was made by the defendant's father for the children of said Price; that he had made improvements upon said property after he became trustee for his children under his father's will, the same being for his children's benefit, and that his use of the property was by the consent of the children out of their affection for him. Said Price denied that any part of the properties mentioned in the bill of complaint were his, or that he had any interest therein, and alleged the money used by him in improving the same not to belong to him, and finally alleged that the complainant had no claim whatever in any of the property standing in the name of any of the said defendants; and your oratrix shows that after the filing of said answer, the said cause slept until

6 on or about the ninth day of August, eighteen hundred and ninety-two, when your oratrix filed therein a petition in which she stated that since the filing of the bill of complaint in the cause, no payment had been made by said Price upon the judgment

therein mentioned, nor had the complainant or her solicitors been able to find any personalty or real estate of the said Price by levy upon and sale of which any part of the amount due upon said judgments could be obtained. And your oratrix showed that the whole of said judgment, with lawful interest remained due, that execution *de bonis et terris* was issued upon the original judgment and returned unsatisfied for want of property whereon to levy; that subsequently an alias writ of *fieri facias de bonis et terris* was also issued upon said judgment of your oratrix and delivered to the sheriff of Bergen county, but was likewise returned unsatisfied, and that on the fourth day of August, eighteen hundred and ninety-two, your oratrix caused another writ of execution *de bonis et terris* to be issued upon the judgment by her recovered, and directed to the sheriff of Bergen, which execution was returned unsatisfied, no goods or lands being found whereon to make the levy. And your oratrix then stated in said petition that it had lately come to the knowledge of her solicitors through information from Washington city, and she charged that the sum of about forty-five thousand dollars was about to be paid to said Price by officers of the Department of the Treasury of the United States, being a sum found to be due him from the Government of the United States by an accounting lately had between him and it; that said sum was to be paid by the delivery to said Price or to his attorneys of a draft of the Treasurer of the United States, or some other negotiable security made or issued by its financial officers and drawn payable to his, the said Price's own order, the rules of the Department of the Treasury, forbidding its being made payable to the order of any other person, or that said sum should be paid in any other way, and that said draft or negotiable security was to be made and the transaction closed upon the fifteenth of the then month of August.

7 And your oratrix further showed that said Price had always exhibited great unwillingness to satisfy any part of said judgment due by him, and that although the same represents a debt for money had and received by him for the use of said Samuel Forrest, deceased, the transaction being that said Price was the attorney-in-fact of said Samuel Forrest for the sale of certain land to him, belonging in the State of California, and that said Price made sale of said land and received the consideration thereof, being a sum exceeding twenty thousand dollars; that nevertheless instead of paying over the said money he retained the sum of about seventeen thousand dollars, and refused and neglected to pay over the same to the said Forrest. Your oratrix stated that she believed that said Price would, if he obtained the said money coming from the United States to him, at once take means to put the same beyond the reach of your oratrix unless restrained by the order of this court, and your oratrix prayed that a writ of injunction might issue out of and under the seal of this court, directed to the said Rodman M. Price restraining and forbidding him to make any endorsement of any such draft or any draft or other negotiable security of the United States, which should come to his hands or to the hands of any other person or any money derived therefrom or thereby to any other person whatever,

except your oratrix or her attorneys, until further order of the court. And further she prayed that a receiver might be appointed of the said draft or other negotiable security aforesaid, and that said Price might be ordered and directed immediately on the receipt of said draft or negotiable security, to endorse the same to said receiver to the end that the amount thereof might be received by him as an officer of this court, and disposed of according to law and such directions as should therein be made.

And your oratrix shows that on presentation of said petition and of affidavits sustaining the same, your oratrix obtained from your honor in this honorable court, a rule, to wit, on the eighth day of

8 August, one thousand eight hundred and ninety-two, returnable on the twelfth day of September following, at the chancery chambers in Jersey City, that the said Rodman M. Price should show cause upon the said last-mentioned day, why the prayer of said petition should not be granted, and why an injunction should not issue and a receiver be appointed pursuant to the said prayer, and said rule further directed that said Price should be, and was thereby restrained and enjoined from making any endorsement of any such draft of the United States as was mentioned in said petition.

And your oratrix shows that a copy of said order, according to directions given therein, was duly served upon the said Price upon the tenth day of August, eighteen hundred and ninety-two, said copy being duly certified by the clerk in chancery under the seal of this honorable court, that nevertheless after such service, and on or about the fifth day of September in said year, the said Price received from the assistant treasurer of the United States at Washington city, four several drafts signed by such assistant treasurer, and dated the fifth day of September aforesaid, addressed to the assistant treasurer of the United States in New York, and payable to his order as late purser U. S. N., such drafts being for the following sums respectively: one for twenty-seven hundred and four dollars and eight cents, another for thirteen thousand five hundred dollars, a third for twenty thousand dollars, and a fourth for nine thousand dollars; that on or about the seventeenth day of September aforesaid, said Price endorsed and received the money for said draft for thirteen thousand five hundred dollars, without permission of this court; that on or about the third day of October, eighteen hundred and ninety-two, said Price endorsed and received the money for said drafts for twenty thousand dollars and nine thousand dollars respectively; also without any permission of this court, and on or about said fifth day of September, said Price endorsed said draft for twenty-seven hundred and four dollars and eight cents, and received

9 the money therefore without previous permission of this court, and your oratrix shows that he received all said moneys and applied them to his own use and benefit.

And your oratrix further shows that on the same third day of October, eighteen hundred and ninety-two, on which he received the money for and endorsed said drafts for twenty thousand dollars and nine thousand dollars respectively, he, the said Price, filed an answer to said petition in which he stated that the said judgment

of said Forrest and of your oratrix against him was paid. And he further stated in said answer that there was a sum of money due to him from the United States, voted to him or his heirs by Congress, and that about forty-five thousand dollars was to be paid, but that said claim was not amenable to the payment of complainants' claim even if valid, nor could it be lawfully paid to any receiver.

And your oratrix shows that it appears by the record of said judgment produced in said cause that the same, instead of being by default, was a judgment upon confession pleas in defense of said Price being by him first withdrawn, and that on the same day of his swearing to and filing said answer, said Price endorsed and received the money for the two drafts for twenty thousand dollars, and nine thousand dollars respectively, the rest of said forty-five thousand dollars having been previously paid to him.

And your orator further sheweth that on the tenth day of October, eighteen hundred and ninety-two, it was ordered by this court according to the prayer of said bill that your orator said Borchertling should be and he was thereby appointed receiver of the property and things in action belonging or due to or held in trust for said Price at the time of issuing said executions heretofore mentioned, or at any time afterwards, and especially of said four drafts with authority to possess, receive, and it may be in his own name as such receiver sue for such property or things in action, and it was made thereby the duty of said receiver to hold said drafts subject to the further order of the chancellor herein, and said receiver

10 was required to give bond conditioned for the faithful performance of his trust for forty thousand dollars, with sufficient sureties to be approved as to form and sureties by one of the masters of this court, and the said defendant Price was thereby ordered to convey and deliver to said receiver all such property and things in action, and the evidence thereof, and especially forthwith to endorse and deliver said drafts respectively, and each of them to said receiver and the said Price, and all agents or attorneys by him theretofore or thereafter to be appointed were thereby enjoined and restrained from intermeddling with said receiver in regard of said drafts, and ordered and directed if in possession or control thereof, to make delivery to him of the same, and to do all things necessary which should be within their power to put said receiver in possession and control thereof, provided nevertheless that if said drafts, excepting said draft for thirteen thousand five hundred dollars, should be delivered with the endorsement of said defendant to the clerk of this court, the proceeds thereof to be deposited to the credit of this cause on or before the thirteenth day of October instant, then said order was to be void, and said Price was thereby enjoined and restrained from any endorsement or appropriation of any of said drafts otherwise than to said receiver or to said clerk for deposit as aforesaid. And your orators show that said drafts mentioned in the proviso contained in said order were not delivered as thereon stated whereby said order remained in force.

And your orators show that said receiver complied with said order

by filing such bond as therein directed, made and filed his official oath according to law, and entered upon the duties of his said office.

He thereupon caused to be served upon said Price a true copy of the said order, and demanded of him in writing annexed thereto that he deliver to him the said receiver, said drafts of nine thousand dollars, twenty thousand dollars, and two thousand seven hundred

11 and four dollars and eight cents directed by said order to be delivered to him, and further demand was in such writing made that if said drafts or either of them were not in his physical possession, but were held for him or subject to his control, whether alone or jointly with any other person, or deliverable upon the joint order of said Price and any other person, he was thereby required to give his consent and order in writing for their delivery to him, the said receiver, or to his order, and to direct the consent and order thereof to be given of any agent, attorney or trustee for him, and to do all things necessary within his power to put said receiver in possession and control thereof.

Said service of said order, together with said demands, though sought to be made upon the twelfth day of October, eighteen hundred and ninety-two, or thereabouts, was not made until on or about the twenty-second day of July, eighteen hundred and ninety-three, because the said Price was not to be found within this State in order to such service thereof, but notice of said order without said demand and by delivery of a copy thereof to him, was given to said Price elsewhere than in this State, shortly after the date thereof. And your orators show that on or about the — day of —, eighteen hundred and ninety-two, an attachment was issued by this honorable court against said Price for contempt of this court in disobeying said order, of the eighth of August, one thousand eight hundred and ninety-two, and such proceedings were had thereon that after interrogatories filed and answered, and upon full proof of such disobedience, said Price was convicted of such contempt of this court by an order of this court bearing date the eighteenth day of May, eighteen hundred and ninety-four, and said Price was thereby directed to pay over to your orator, the said receiver, the sum of over thirty thousand dollars, besides a fine of fifty dollars and costs of said proceedings.

12 And said order further directed that on failure after five days' service of a duly certified copy of said order upon him, to comply with the same, he should be imprisoned in the county gaol of said Bergen county until said order was performed.

And your orators further show that said forty-five thousand dollars or thereabouts, the amount of said four drafts, was part of a certain debt of seventy-six thousand dollars or thereabouts awarded to him, the said Rodman M. Price by the officers of the Treasury Department of the United States under an act of Congress of the United States passed February 23rd, 1891, and agreed to be paid to him in conformity with the directions contained in said act by said officers.

The drafts for only the said four amounts heretofore mentioned of two thousand seven hundred and four dollars and eight cents,

thirteen thousand five hundred dollars, twenty thousand dollars and nine thousand dollars were issued and given to said Price on account of said debt, of about seventy-six thousand dollars aforesaid, said officers at first believing there was a counter-claim on the part of said United States against said Price for a debt due by said Price by the Government of the United States, but afterwards and about the — day of —, eighteen hundred and ninety-three it was made known to the representatives in that behalf of your orators, that the United States Treasury Department had reconsidered its former determination and was about to pay unto said Price a sum of about thirty-one thousand dollars still remaining due upon said sum awarded, and that said Price and his agents and attorneys were actively seeking to obtain payment of the same, and thereupon by order of this court and upon proof of a demand made by your orator, the said receiver upon the said Price, that he should sign and file his consent in writing with the Treasurer of the United States that said money remaining due as aforesaid should be paid to your orator the said receiver, and upon further proof that said Price refused so to do, another order was made by this court, dated on the same

13 eighteenth day of May, eighteen hundred and ninety-four, by which the said Price was directed to execute two certain instruments in writing, which before that time he had been required by this court to sign, seal, and deliver, one of them consenting that the balance of said money due to him by the United States should be paid by it, and by its Treasury Department unto your said orator Charles Borchertling, receiver as aforesaid, which consent should be filed with its said Treasurer, and the other of said instruments being an assignment in writing under his seal proposed to be made by him of all his property, real and personal whatsoever and wherever, of all rights and credits to him belonging, and said last-mentioned order directed that it should be served upon said Price by a delivery to him of a duly certified copy thereof.

And your orators show that at the time of service upon him of said duly certified copies of said orders respectively, said Rodman M. Price was sick, but was of sound mind, and capable physically of obeying the same, and especially of obeying the last mentioned of said orders, and executing, delivering and sending to their proper destination the two instruments in writing last above described; and your orators show that the said Rodman M. Price after such service made upon him of said two orders, and on or about the eighth day of June, eighteen hundred and ninety-four departed this life, to wit, at his residence in the county of Bergen, New Jersey.

And further your orators show that neither in the prerogative court, nor before the surrogate of Bergen county, or the orphans' court, thereof, has any last will of the said Price been presented for probate, of nor has any application been made for the issue of letters of administration as in case of intestacy to the said Rodman M. Price, deceased. And your orators show that, although certified copies of said orders, on or about the twenty-eighth day of May, eighteen hundred and ninety-four, were duly served as aforesaid,

14 yet the illness of said Price prevented any enforcement of said first-mentioned order, and he departed this life without having paid the said money in said order directing his incarceration in case of disobedience to the sum mentioned and without affixing his signature to the instruments annexed to the second of said orders last mentioned or to either of them.

And your orators show that by reason of the premises your orators are without remedy for the recovery of the money belonging to your orator, the said receiver and due to your oratrix, the said administratrix, and that the object of the said bill of complaint by your oratrix, administratrix as aforesaid, is entirely frustrated, and that your orators are advised it is necessary that remedy should be sought in this honorable court against whosoever should be admitted, either as executor or administrator, to represent the said Rodman M. Price, deceased, while as to the said balance of said sum of seventy-six thousand dollars still unpaid and remaining in the hands of the Treasurer of the United States, and the disposition thereof according to law, your orators are without adequate remedy because of the legal impossibility of enforcing any decree directing the payment by the Treasury Department of the United States of said monies unto said receiver for your oratrix as aforesaid. And your orators show that nevertheless the officers of the said Treasury Department are desirous of doing right and justice in the premises; that demand has been made by your orator, the said receiver, upon the Treasurer of the United States for the payment of said balance of money over to him; that said Treasurer does neither consent or refuse so to do, and awaits the determination by some lawful tribunal of the right of said receiver in the premises, and your orators believe that on the decree by this honorable court that said receiver is entitled to said balance, and notice thereof duly given to said United States Treasurer, or the Secretary of the Treasury said decree will be respected, and said balance handed over.

15 And your orators further show unto your honor that on the ninth day of June, eighteen hundred and ninety-four, being the day after the death of said Rodman M. Price, deceased, Francis Price, Rodman M. Price, Madeline Price, E. Trenchard Price, and Gouverneur Price, children of said Rodman M. Price, deceased, executed a power or powers of attorney to John C. Fay, of Washington city, counsellor-at-law, and attorney in his lifetime for said Rodman M. Price, deceased, and who appeared in the course of the litigation in respect to said United States drafts in this honorable court as such attorney; and by such powers of attorney authorized said Fay to apply to the Secretary of the Treasury to pay to them the balance standing to the credit of said Rodman M. Price under said act of February twenty-third, 1891, and that said parties are now pressing said claim with the said Secretary of the Treasury, insisting that by the true construction of said act of February 23rd, 1891, said balance of said monies standing to the credit of said Price, deceased, belonged to them as his heirs-at-law, and that your orator, the said receiver, has no right in the law thereto, being the

same insistment made by said Price, deceased, in his answer to said petition as above stated.

And your orators show that the Treasury Department of the United States, acting under the said act, has settled with the said Rodman M. Price and credited him upon its books with the sum of about seventy-six thousand dollars, as being due to him, that it has as already aforesaid paid to him through said four drafts heretofore mentioned, a large portion of said money, reducing the said credit thereby; that it has further paid unjustly and the same was received by the said Price and his attorneys in fraud of the law and the orders of this court heretofore rendered in said suit hereby sought to be revived, and of the bill of complaint to which this bill is intended to be supplemental, over nine thousand dollars, thereby

reducing the balance apparent on said books as due to said
16 Rodman M. Price in his lifetime to the sum of about twenty-three thousand dollars; that under a proper construction of said law, and by force of said receivership, and the laws of New Jersey, where said Price resided, said Price's right to all the balance aforesaid of said monies passed to your orator, the said receiver, and remains still in him; that in the true construction of the words in said act directing payment of said money to said Price and to his heirs, the said words "to his heirs" are simply words importing that the monies be awarded and paid to the legal representative of said Price, in case, before such award, he had departed this life; that the said receivership having worked a legal assignment by said Price to your orator, the said receiver, of all his rights and credits and property, legal and equitable, of whatever description, he is to be held in law as having received said monies and made assignment thereof unto your orator, the said receiver.

And your orators insist that there is no pretence of right in said children although heirs of said Price, to make the demands aforesaid, or seek payment of the said balance to them. And your orators further show that it was argued before your honor in this honorable court in the discussion of the motion for the two last orders made in this cause and hereinbefore particularized by counsel for the said Price in the presence of two at least of the said children, and with their consent, as set up in said Price's answer to said petition that under proper construction of said act of Congress of February 23rd, 1891, said monies in case of the death of said Price passed to said children as his heirs-at-law; and the same insistment was made as a reason why said order for assignment in writing thereof and the consent in writing to such payment should not be granted, and said argument was duly considered by this honorable court, which declared in its opinion filed and under which said orders were last mentioned were made, that said construction of said act was erroneous, and that said monies in case of the

17 death of said Rodman M. Price would, had there been no receivership go to his executors or administrators, but in view of said receivership that the same belongs to your orator, the said receiver.

And your orators show that the action of said children in demand-

ing said balance of said money is in fraud of said orders made by your honor, with which orders they were all acquainted, some at the time of delivering the same to said Price, deceased, and the others immediately thereafter; that some days before said service true copies of said order respectively were furnished to the counsel of said Rodman M. Price, and as your orators believe, were communicated by him to said children; that knowledge thereof was also communicated through some one or more of said children or otherwise to said John C. Fay, and that the application made to said Secretary of the Treasury as aforesaid, is in pursuance of agreement and conspiracy among all said parties including the said attorney Fay, to defeat the operation of said orders.

And your orators show and repeat that the right to said monies and to all estate, real and personal, whether in possession or action, belonging to the said Rodman M. Price at the said date of said order appointing your orator, the said Charles Borchertling receiver in this cause, and at the date prior thereto, of the issue of executions mentioned in said order, vested by law in your orator, the said Borchertling receiver as aforesaid, and has been so adjudged after solemn, careful consideration of this court; that by orders and process issued in this cause said Price and said Fay and all claiming under said Price were enjoined by this court from demanding said monies; that the receipt by said Fay of a part of said monies was in direct disobedience of the order of this court, and that any action such as that now taken on the part of the said children of said Price and of his said attorney, to hold or obtain any part of said property or rights in the monies awarded to said Price, constitutes a conspiracy to thwart and defeat the orders and decrees of
 18 this court and contempt of its authority and jurisdiction and should be prevented by its decree.

And your orators further insist that the disposition of said money and the adjudication of the right thereof belongs in law and in equity exclusively to this honorable court, whose receiver claims the same under the law and his appointment, and that the action of said children of said Price in seeking to defeat the claim of said receiver, is a contempt of this honorable court; that it is their duty, the court having through its receiver and by express order made in this cause approbatory of his action in seeking to obtain the same from the Secretary, to come to this court and make any claim they have, thereto before your honor, and not to seek elsewhere or elsewhere any adjudication or their right, much less to attempt to secure said monies. And your orators further show that as aforesaid, no application having been made by any person in any court having lawful jurisdiction for letters of probate of any will of the said Rodman M. Price, deceased, or for administration of his estate, as an intestate, application has been duly made to the honorable pre-rogative court of New Jersey, and letters of administration *ad prosequendum* have been granted unto Allan L. McDermott, wherefor said Allan L. McDermott is hereby made defendant to this bill of complaint, to the end that decree may be made for the revival of said suit and for such further decree in relation to the estate of said

Rodman M. Price, and such relief as to your honor shall seem meet and agreeable to equity and good conscience.

In tender consideration whereof, and forasmuch as your orators have no adequate remedy in the premises elsewhere than in this honorable court, to the end, therefore, that the said John C. Fay, Francis Price, Rodman M. Price, Madeline Price, E. Trenchard Price and Gouverneur Price, joined as defendants in this suit with the said Allan L. McDermott as administrator *ad prosequendum* 19 as aforesaid, may answer the premises, and that it may be decreed by this honorable court as follows, that is to say :

1. That said bill of complaint of your oratrix, filed in this court as aforesaid, in the year eighteen hundred and seventy-four, may be revived, and the said administrator *ad prosequendum* be adjudged to be a proper party hereto.

2. That the said Francis Price, Madeline Price, Rodman M. Price, Gouverneur Price, E. Trenchard Price and John C. Fay, may each and every of them be perpetually enjoined and restrained from making any demand upon or application to the Government of the United States, or the Secretary of the Treasury of the United States, or any officer of said Treasury, or from receiving from the United States or its said Secretary of the Treasury, or any officer thereof, any part of the money now remaining in the Treasury of the United States, and which was awarded to the said Rodman M. Price as herein aforesaid.

3. That the parties above named be ordered and decreed to pay to your orator the said Charles Borchering, receiver as aforesaid, to be by him disposed of under the orders of this court, any part of said money which they respectively have received or hereafter may receive.

4. That said administrator *ad prosequendum*, or any executor or administrator of said Rodman M. Price, deceased, who shall hereafter be admitted and made a defendant in this suit may likewise answer this bill of complaint and be decreed to deliver and pay over to said receiver, the said Charles Borchering, all property of said Rodman M. Price, whether in possession or action, which shall come to the hands of said executor or administrator, and to that end, he and the said children of said Price, do make discovery of all such property.

20 5. That such other and further relief be granted as shall be according to equity and good conscience.

6. May it please your honor the premises considered to grant unto your orators, not only the State's most gracious writ of injunction to be to the said persons above named, and who are defendants hereto, directed and issued out of this honorable court, enjoining and restraining them as hereinabove prayed, but also the State's most gracious writ of subpoena to be issued out of this court and directed to said persons respectively, thereby commanding them to appear before your honor — this court at a certain day, and under a certain penalty therein to be named, then and there to make answer to the premises as above prayed, and to abide such judgment and

decree therein as to your honor shall seem meet and agreeable to equity and good conscience.

And your orators will ever pray.

CORTLANDT & WAYNE PARKER,
Solicitors of said Complainants.
CORTLANDT PARKER, *Of Counsel.*

ESSEX COUNTY, ss :

Cortlandt Parker, of said county, being duly sworn saith that he is a counsellor-at-law, and is one of the solicitors and counsel for the complainants in the above bill named ; that he prepared the same ; that the allegations therein of the action taken by John C. Fay and by the other parties named in said bill as children of Rodman M. Price, deceased, are made from information derived from his associate counsel in this litigation resident in Washington city, and that he believes said allegations to be true.

Deponent saith that all other allegations in said bill contained are shown to be true by the proceedings and files remaining of record in this court in this cause.

And further saith not.

CORTLANDT PARKER.

Sworn and subscribed this second day of July, 1894, before me, at Jersey City.

HENRY C. McCARTIN,
Master in Chancery of New Jersey.

In the Chancery Court of New Jersey.

I, Frank W. Hackett, counsellor-at-law, of 486 La. Av., Washington, D. C., on oath depose and say that certain persons who allege that they are heirs of Rodman M. Price, have applied to the Secretary of the Treasury to pay to them the balance standing to the credit of said Rodman M. Price under act Feb. —

They are Francis Price, Rodman M. Price, Madeline Price, E. Trenchard Price and Gouverneur Price. I recite these names from memory, but I think they are correct. They have filed an affidavit of the widow of said Rodman M. Price and power of attorney — to John C. Fay, of Washington. I have seen Mr. Fay's letter addressed to the Secretary of the Treasury asking that payment be made to these heirs, and I have seen the power of attorney, one of these papers according to my recollection is dated June 9th, I also know from a statement made to me by the said Fay that he is pushing this claim at the Treasury. He is the same John C. Fay who was of counsel for said Rodman M. Price. As representing the receiver, I have notified the Secretary of the Treasury that we protest against such payment.

I further state that I am of counsel for the receiver in the injunction proceedings against said Rodman M. Price, and that no
22 notice has been served on me or given to me in any way, of an application by any one to dissolve said injunction. I be-

lieve that the said Trenchard Price is a clerk in one of the departments and a resident of Washington.

FRANK W. HACKETT.

UNITED STATES OF AMERICA, }
District of Columbia, City of Washington, } To wit:

Be it remembered that on this 21st day of June, A. D. 1894, in the District of Columbia, aforesaid, before me, Charles S. Bundy, who am a commissioner of deeds for the State of New Jersey, within said District, lawfully authorized to administer oaths and affirmations therein, personally appeared Frank W. Hackett, counsellor-at-law in said District, who being by me duly sworn upon his oath, says, that the foregoing statement is in his handwriting, and is signed by him, and is true of his own knowledge, except as to those matters stated therein upon his information and belief, and as to such matters he believes it to be true.

FRANK W. HACKETT.

Sworn and subscribed before me this 21st day of June, 1894.

[L. S.]

CHARLES S. BUNDY,
Commissioner of Deeds of the State of New Jersey
within and for the District of Columbia.

A true copy.

ALLAN McDERMOTT, *Clerk.*

Upon filing the within bill and affidavits thereto annexed let an injunction issue, restraining the defendants, Francis Price, Madeline Price, Rodman M. Price, Gouverneur Price, E. Trenchard Price and John C. Fay and each of them from making any demands upon or application to the Government of the United States or the Secretary of the Treasury of the United States, or any officer of said Treasury, or from receiving from said Treasury or any officer thereof, any part of the money, or the whole thereof now remaining in said Treasury, which was awarded or credited to Rodman M. Price, deceased, as in this bill stated.

Dated July 2nd, 1894.

ALEX. T. MCGILL, C.

In Chancery of New Jersey.

Between—

ANNA M. FORREST, Administratrix of Samuel Forrest, Deceased, Com- plainant,	}	On Bill of Revivor and Original Bill in the Na- ture of Supplemental Bill.
and		
RODMAN M. PRICE, Defendant.)	Plea.

The joint and several plea of Madeline Price and Gouverneur Price, defendants, to the bill of complaint of Anna M. Forrest, administratrix of Samuel Forrest, deceased, as a bill of revivor and original bill in the nature of a supplemental bill against these defendants and others.

These defendants, Madeline Price and Gouverneur Price, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, for plea thereunto say :

22b That Rodman M. Price, late of Bergen county, in the State of New Jersey, departed this life on the seventh day of June, eighteen hundred and ninety-four, intestate, leaving him surviving Matilda C. S. Price, his widow, and Francis Price, Madeline Price, Rodman M. Price, Gouverneur Price, and E. Trenchard Price, his heirs-at-law, and among whom are these defendants, Madeline Price and Gouverneur Price; that the said Rodman M. Price, deceased, was not seized at the time of his death of any messuages, lands, tenements or hereditaments in the State of New Jersey or elsewhere, and that no messuages, lands, tenements or hereditaments descended to these defendants or either of them from their said father; neither were any lands, tenements, or hereditaments devised by the said Rodman M. Price, deceased, to these defendants, or either of them; and further, neither these defendants, or either of them have any knowledge, information or belief as to the personal estate of the said deceased, except that the said Rodman M. Price, deceased, had at his death no personal estate or property whatever, as they believe, and that neither of these defendants has had or hath the possession, ownership or control of any personal estate whatever from their said father, or any knowledge of the existence anywhere of any such estate; neither have these defendants, or either of them, received any moneys from the Government of the United States, either through their father, Rodman M. Price, or otherwise, under or by virtue of the act of Congress referred to in the said bill of complaint, which act was approved by the President, February twenty-third, eighteen hundred and ninety-one, and of which the following is a copy :

“An act for the relief of Rodman M. Price.”

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury of the United States be and he is hereby authorized

and directed to adjust upon principles of equity and justice the accounts of Rodman M. Price, late purser in the United States Navy, and acting navy agent at San Francisco, California, crediting him with the sum paid over to and receipted for by his successor, A. M. Van Nostrand, acting purser, January fourteenth, eighteen hundred and fifty, and pay to said Rodman M. Price, or his heirs, out of any money in the Treasury not otherwise appropriated, any sum that may be found due him upon such adjustment.

"Approved February 23, 1891."

But as to all moneys not actually received by the said Rodman M. Price, deceased, in his lifetime, from the Government of the United States upon the adjustment under said act, whether it be the sum of twenty-three thousand dollars mentioned in the said bill, or any other sum greater or less, actually remaining unpaid to the said Rodman M. Price at his death, these defendants, together with the other heirs of the said Rodman M. Price, deceased, referred to in said act, are entitled to thereunder by special designation in the said act, as his heirs, and the said moneys so remaining unpaid are in no way chargeable with the debts and liabilities of the said Rodman M. Price deceased, or to any of his creditors, and that to all such moneys so unpaid to the said Rodman M. Price, in his lifetime, are payable by the Government of the United States directly and exclusively to these defendants and the other heirs of the said Rodman M. Price, deceased, out of any money in the Treasury not otherwise appropriated and for the benefit of the said heirs respectively, without any claim whatsoever upon the same by the complainant. The balance unpaid as aforesaid to the said Rodman M. Price in his lifetime, and to which these defendants, together with the other heirs of said deceased, are entitled as aforesaid, which balance these defendants say and believe is about twenty-three thousand dollars, is a part of the sum referred to in said act as paid over to and receipted for by A. M. Van Nostrand, acting purser, January 14, 1850.

22d That on or about the sixth day of December, eighteen hundred and forty-eight, in the early settlement and development of California, the said Rodman M. Price, deceased, was assigned to duty upon the Pacific coast at California, as purser and fiscal agent of the Government of the United States for the Navy Department of the United States, he then being a purser in the United States Navy, and acted as such up to about December, eighteen hundred and forty-nine, or January, eighteen hundred and fifty, when he was detached by the Government of the United States from such duty and ordered to transfer all public money and public property remaining in his hands to his successor, or to such other disbursing officer of the navy as might be designated by the commanding naval officer of the naval station of California, and immediately after such transfer to report to the city of Washington for the purpose of settling his accounts. Afterwards, in the month of December, eighteen hundred and forty-nine, A. M. Van Nostrand, referred

to in the said act of Congress, became the successor of the said Rodman M. Price, deceased, in California aforesaid, as acting purser in the Navy of the United States. Afterwards on or about the thirty-first day of December, eighteen hundred and forty-nine, Commodore Jones of the United States Navy, commanding the United States squadron at San Francisco, California, on behalf of the Government of the United States, directed Acting Purser Van Nostrand, aforesaid, to call on Purser R. M. Price, aforesaid, and to receive from him all books, papers, office furniture and funds on hand belonging to the purser's department at San Francisco. In accordance therewith and with the instructions aforesaid to the said Purser Price, he paid over on the thirty-first day of December, eighteen hundred and forty-nine, to the said Van Nostrand, acting purser of the United States Navy at the San Francisco station in California, the sum of forty five thousand dollars, being all the public moneys of the United States in the hands of the said purser Price.

22c Afterwards, on the fourteenth day of January, eighteen hundred and fifty, the said Rodman M. Price, out of his private moneys alone and not of the Government of the United States, advanced to the said Van Nostrand seventy-five thousand dollars, and took his receipt thereof as follows:

"SAN FRANCISCO, *January 14th*, 1850.

"Received from Rodman M. Price, purser U. S. Navy, seventy-five thousand dollars, for which I hold myself responsible to the United States Treasury Department, \$75,000. (Duplicate.)

"A. M. VAN NOSTRAND,
"Acting Purser."

Which advance was without the approval and signature of Commander Jones, the commanding officer of the said acting purser, A. M. Van Nostrand, although the said Rodman M. Price regarded the advance as an accommodation to the Government of the United States at that time being in the early history of California.

Previous to the approval of the act of Congress aforesaid and the adjustment of the accounts therein referred to, the Government of the United States had always declined upon request made by the said Rodman M. Price, deceased, to pay or reimburse him for the said sum of seventy-five thousand dollars, or any part thereof. The said A. M. Van Nostrand never returned or paid the said money or any part thereof to the said Rodman M. Price; neither did he account for the sum to the Government of the United States. Previous to the twelfth day of March, eighteen hundred and fifty-four, the Honorable Caleb Cushing, then Attorney General of the United States and acting as such, in obedience to the request of the Honorable James C. Dobbin, then Secretary of the Navy of the United States, investigated the claim of the said Rodman M. Price, deceased, against the Government of the United States for the reimbursement or payment to him of the said seventy-five thousand dollars

22f by the Government aforesaid, and gave an opinion that the Government of the United States was not responsible for and

could not be charged with the private funds paid by Rodman M. Price aforesaid to the said Van Nostrand and without the written approval of the said commanding officer, Commodore Jones. A copy of which opinion in full is annexed to this plea making part thereof, and to which reference is made for all the facts therein stated and the matters of law and otherwise therein contained.

Previous to the giving of the opinion aforesaid the said Rodman M. Price, deceased, had frequently claimed of the Government of the United States the payment of the said seventy-five thousand dollars, but the said Government had always declined to pay the same; after the giving of the said opinion the Government of the United States continued to decline to pay the same, up to the time of the approval of the said act of Congress and the adjustment of the accounts therein referred to, always denying and disputing the liability of the said Government to pay the same. And these defendants say that the said claim was not a lawful claim against the Government of the United States for which it was lawfully liable; but in view of the fact that the money had been paid or advanced by the said Rodman M. Price, deceased, as aforesaid, in the belief that it would be an accommodation to the said Government in the condition of things that existed in the early history of California at that time, and in view of the fact that the said Rodman M. Price had become old, and had been in the service of the Government of the United States as a purser in the navy for many years, and also governor of the State of New Jersey, and that it was equitable and just, apart from the question of the lawfulness of the claim, that he or his heirs mentioned in the said act of Congress should be paid the said sum of seventy-five thousand dollars, the said act of Congress was accordingly passed.

22/ In accordance with the said act the Secretary of the Treasury of the United States, in or about the month of August, eighteen hundred and ninety-two, adjusted the accounts of the said Rodman M. Price, late purser in the United States Navy and acting navy agent at San Francisco, California, crediting him with the said sum of seventy-five thousand dollars, paid over to as aforesaid and receipted for by his successor, A. M. Van Nostrand, acting purser, January 14, 1850, leaving the sum of seventy-six thousand, two hundred and four dollars and eight cents found due him; the said Rodman M. Price, deceased, upon such adjustment, according to the intent and meaning of the said act, which sum includes the whole of the said seventy-five thousand dollars as a part thereof, of which these defendants admit the said Rodman M. Price, deceased, in his lifetime, actually received four drafts from the Government of the United States, and the money therefor, amounting to forty-five thousand, two hundred and four dollars and eight cents, and that the balance thereof of thirty-one thousand dollars, which is part of the said seventy-five thousand dollars after deducting any other sum actually paid to the said Rodman M. Price, thereon in his lifetime by the Government of the United States, these defendants, being the heirs of the said deceased, together with the other heirs

aforesaid, are entitled to as aforesaid under and by virtue of the said act of Congress and adjustment aforesaid.

All which matters and things the defendants aver to be true and plead the same to the said bill, and humbly ask the judgment of this honorable court whether they ought to be compelled to make any answer to the said bill of complaint, and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

BEDLE, MCGEE & BEDLE,
Solicitors for and of Counsel with the Defendants
Madeline Price and Gouverneur Price.

22h

ATTORNEY GENERAL'S OFFICE, 12th March, 1854.

SIR: "Your letter of the 12th of January presented certain questions of law, to understand which, and the conclusions to which my mind has come on the subject it is necessary to state the material facts as they appear by the documents transmitted.

"On the 6th of December 1848, a letter of instructions issued from the Secretary of the Navy (the Hon. I. Y. Mason) to Rodman M. Price, purser U. S. Navy, to the following effect:

"The cost of obtaining funds for the naval disbursements in the Pacific ocean, has, for many years, embarrassed the department. The acquisition of an extensive front on that ocean renders it very important to the naval service that measures should be at once adopted to provide means for their disbursement without any loss of exchange directly in the sale of bills, or indirectly by drawing on London. If it can be successfully established, as I doubt not it can be, that bills on the department, at short dates, can be converted into coin at an advance beyond their value on their face, the result will be highly important; it will promote exchange on our Atlantic cities, and may supercede the necessity of the expensive agency at Lima. You will proceed by the most speedy conveyance across the isthmus, to San Francisco, and establish yourself there or at Monterey. * * * Your duty will be to procure funds for the squadron and other public naval purposes, on bills drawn on the Navy Department. You will, when required by the commodore or the squadron naval officer present, effect such negotiations, taking care never to sell a bill below par, and realizing for the service any amount of premium which the market affords. If such negotiations are impracticable on the terms suggested, you are authorized to call

22i on John Parrott, Esq., temporary navy agent at Mazatlan, and who has authority to draw on London. * * * The steam propeller Massachusetts expected to reach San Francisco in February next, will be placed in command of a naval officer. You will discharge the duties of purser, while she is so engaged, and will be allowed a clerk on board.

"You will pay all officers of the navy on special service in California, or who may be in that part of the United States detached from service.

"You will communicate with the department on all and every

suitable opportunity, and in all cases give due notice of bills drawn.

"The duty on which you are employed, * * * the objects of the department * * * are to save the expense of transmitting specie to the Pacific, to dispense with bills on London, by introducing those on Washington, to realize a premium to the extent of the local market, and to promote economy in the naval disbursements."

Under these instructions Purser Price proceeded to San Francisco and Monterey.

On the 4th of August, 1849, the Secretary of the Navy, Hon. William Ballard Preston, issued to Commodore Thomas A. Caterby Jones, commanding U. S. squadron, San Francisco, California, this order:

"The department desires that the accompanying order, addressed to Purser Rodman M. Price, be handed to him at the earliest day practicable, and you will be pleased to afford all the facilities in your power for his speedy return to Washington."

"NAVY DEPARTMENT, *August 4, 1849.*

"Purser Rodman M. Price, U. S. Navy, San Francisco, Cal.

"SIR: You are hereby detached from duty at the naval station of California, assigned to you under letter of instructions addressed to you by this department on the 6th December last, and you will transfer all public money and public property remaining in
22j your hands to your successor, or to such other disbursing officer of the navy as may be designated by the commanding naval officer of that station. Immediately after such transfer you will repair to the city of Washington for the purpose of settling your accounts."

The above were received at San Francisco by Commodore Jones on the 10th of October, 1849, by the mail steamer California.

By letter of the same date addressed to Mr. Price then at Monterey, by Commodore Jones from flagship Savannah, bay of San Francisco, the purser was informed of his recall to Washington:

"You will perceive that it may devolve on me to appoint your relief which I shall defer doing for the present, in the expectation that the forthcoming steamers, on their way from Panama, may bring a successor, or some specific instructions for my guidance."

On the 9th of December, 1849, Purser Price, having returned from Monterey to San Francisco, addressed this letter to Commodore Jones at San Francisco:

"SIR: Under my instructions from the Navy Department, of 6th December, 1848, I have been paying all the navy officers on special service in California and those detached from service. As I am detached from duty and no successor has arrived, I have to ask your order to designate to whom I shall transfer the pay-rolls and accounts of this station, and also, the Government property belonging to this office."

On the 22d of December, 1849, Commodore Jones appointed as acting purser of the sloop-of-war Warren, then at anchor in the port of San Francisco, Mr. A. M. Van Nostrand, who thereupon gave bond to the United States in the penalty of \$30,000 with two sureties, Augustus I. Bowie and Rodman M. Price (each of whom justified to the sum of \$30,000 over and above liabilities) conditioned that Van Nostrand should faithfully discharge his duties as acting purser in the Navy of the United States. This bond and security being approved by Commodore Jones, Van Nostrand took the oath of office as purser. Van Nostrand was the clerk of Purser Price and had been long connected with the navy at the New York station.

Thereafter, December 31st, 1849, Commodore Jones addressed an order to Acting Purser Van Nostrand, directing him to call on Purser R. M. Price and to receive from him "all books, papers, office furniture and funds on hand belonging to the purser's department at San Francisco."

This order being shown to Purser Price, he, on the same day, paid to Van Nostrand and took his receipt in these words and figures:

"SAN FRANCISCO, December 31st, 1849.

"Received from Purser Rodman M. Price, forty-five thousand dollars for which I hold myself accountable to the Government of the United States."

"A. M. VAN NOSTRAND,
"Acting Purser of the San Francisco Station."

Thereafter Mr. R. M. Price paid another sum to Van Nostrand and took therefor this receipt:

"SAN FRANCISCO, January 14th, 1850.

"Received from Rodman M. Price, purser U. S. Navy, seventy-five thousand dollars, for which I hold myself responsible to the United States Treasury Department. \$75,000. (Duplicate.)

"A. M. VAN NOSTRAND,
"Acting Purser."

The former sum of \$45,000 included all the public money. The latter sum of \$75,000, was the private money of R. M. Price, as he states in his letter of December 16th, 1852, to the 4th auditor A. O. Dayton, which he saw proper to put in the hands of Van Nostrand. "I made (says Mr. Price) a large transfer of money to my successor, which was on accommodation to the Government and suited my private convenience as a remittance, believing that I would immediately receive the balance found due on the adjustment of my accounts here."

That the latter sum of \$75,000 was not the public money, but an advance to Van Nostrand from the private funds of Mr. Price, is also shown by his accounts rendered to the department of his receipts and disbursements up to the 31st of December, 1849, whereby, including this receipt of 14th of January, 1850, Mr. Price claims, upon his

transactions at San Francisco, upwards of seventy thousand dollars as due to him from the United States.

Commodore Jones, immediately after the appointment of Van Nostrand, addressed a letter to the Secretary of the Navy, giving him the information.

On the 12th of March, 1850, Mr. Secretary Preston wrote to Commodore Jones, disapproving of the appointment of Van Nostrand, and directing that no money be placed in his hands, which letter Commodore Jones did not receive until June, 1850.

The Department of the Navy in dispatching the letters of the 4th of August, 1849, to Commodore Jones and to Purser Price, at San Francisco did not foresee and provide specially for the exigency which was occasioned by the discharge of Purser Price from his duties at the naval station at California. Subsequently an attempt was made by Mr. Secretary Preston to provide for such exigency, by sending out John N. Hambleton, who sailed in the U. S. ship *Vandalia* on the 5th of September, 1849, from Norfolk around Cape Horn, but did not arrive at San Francisco until April 12th, 1850, more than three months after Commodore Jones had appointed Mr. Van Nostrand, and after Mr. Price had paid over the two sums in question to Mr. Van Nostrand, Commodore Jones had not been informed of the sending of Mr. Hambleton to succeed Purser Price. The letter from the Navy Department to Commodore Jones, to inform him of the embarkation of Mr. Hambleton on board the *Vandalia* at Norfolk on the 5th of September, 1849, bears date 10th December, 1849, and was not received at San Francisco until 22^m long after the money had been paid over by Mr. Price to Mr. Van Nostrand.

Upon these facts, the following questions of law arise, as propounded by you, namely :

"1st. Whether the appointment by Commodore Jones of Mr. Van Nostrand as an acting purser was valid under 'the rules of 1817' and the sixth section of the act of Congress 'concerning the naval establishment,' approved March 30th, 1812.

"2nd. If the appointment was valid, whether the department has authority to sanction the *advance* made by Mr. Price to Mr. Van Nostrand beyond the amount of *public money* which Mr. Price had on hand on the 31st of December, 1849."

The first question alludes to the act of 30th March, 1812, "concerning the naval establishment" (II Stat. at Large, p. 699), which enacts that pursers in the Navy of the United States "shall be appointed by the President of the United States, by and with the advice and consent of the Senate; and that from and after the first day of May next, no person shall act in the character of purser, who shall not have been thus first nominated and appointed, excepting pursers on distant service, who shall not remain in service after the first day of July next, unless nominated and appointed as aforesaid. And every purser, before entering upon the duties of his office, shall give bond with two or more sufficient sureties in the penalty of ten thousand dollars, conditioned faithfully to perform all the duties of a purser in the Navy of the United States."

By a supplement to this act, approved 1st March, 1817 (III Stat. at Large, p. 350), it is provided that "every purser now in service, or who may hereafter be appointed, shall, instead of the bond required by the act to which this is a supplement, enter into bond with two or more sufficient sureties in the penalty of twenty-five thousand dollars, conditioned for the faithful discharge of his duties

as purser in the Navy of the United States, which said sureties shall be approved by the judge or attorney for the United States for the district in which such purser shall reside.

"SEC. 2. That from and after the first day of May next, no person shall act in the character of purser who shall not enter into bond as aforesaid, excepting pursers on distant service who shall not remain in service longer than two months after their return to the United States unless they shall comply with the provisions of the first section of this act."

But the statute prohibiting persons to act unless first approved by the Senate, must have a construction consistent with the exception to the power of the Senate contained in the Constitution, whereby, "the President shall have power to fill all vacancies that may happen during the recess of the Senate by granting commissions which shall expire at the end of their next session;" so that the statute shall not be in conflict with the Constitution. That is to say, there is an exception not expressed in the statute, but necessarily implied.

The Constitution itself in relation to the power of the President to fill up "vacancies which may happen during the recess of the Senate," must have a reasonable construction, adapted to the end, utility and practical effect intended in conferring that power. If a vacancy happens during the session of the Senate, but does not come to the knowledge of the President until the recess of the Senate, yet the President may fill up the vacancy by a commission to expire at the end of their next session (Mr. Fahey's opinion of July 19th, 1832). Such construction is necessary and proper considering the vast extent of territory subject to the Government of the United States, and especially when considered in reference to officers of the navy on far distant service, in the different seas and oceans.

In such distant service, vacancies will happen which cannot abide to be filled until the President may be informed and exercise his appointing power. To meet such exigencies, the regulations of the navy, contained in what is called commonly, the Blue Book, have made provision. These regulations were prepared under the act of Congress of the 7th of February, 1815, (III Stat. at Large, p. 202), were approved by the President, promulgated in 1817, and communicated to Congress by President Monroe's message of the 20th of April, 1818. In those regulations, under the head of "appointments," sec. 2 — :

"On foreign stations a commander may, when absolutely necessary, give acting appointments to fill vacancies which may be occasioned by death or other circumstances; but, in such cases, he shall take the earliest opportunity to make known the circumstances to the Secretary of the Navy, and state his reasons for making such

acting appointments." (Blue Book of Naval Regulations, p. 37. American State Papers, Naval Affairs, p. 516.)

The regulation above quoted has not been abrogated, but has been, ever since its promulgation, considered as entitled to respect and obedience. Many acting appointments, including acting pursers, have been made under it, which have received the recognition of the President, the Navy Department, the accounting officers of the Treasury and the Judiciary. For the present it will suffice to cite the case of Lieutenant Randolph, appointed acting purser after the death of Purser Timberlake, whose accounts as acting purser were adjusted by the accounting officers of the Treasury. The attempt at a readjustment of them produced the decision of Chief Justice Marshall and Mr. Justice Barbour, in the circuit court of the United States for the district of Virginia, November term, 1833. (11 Brockenborough, 466-487, *ex parte* Randolph.)

The filling up a vacancy by an appointment of one to act *ad interim* and for a particular exigency in a distant service, is in its nature an executive, ministerial, and administrative power. Independently of the act of February 7th, 1815, it was within the constitutional power of the President to make the regulation 22p before quoted. He is limited in the exercise of his powers by the Constitution and the laws, but it does not follow that he must show a statutory provision for everything he does. The Government could not be administered upon such a contracted principle. The great outlines of the movements of the Executive may be marked out and limitations imposed upon the exercise of his powers, yet there are numberless things which must be done which cannot be anticipated and defined and are essential to useful and healthy action of government.

In the acts of 1812 and 1817, before quoted, for regulating the appointment and qualifications of pursers, there are express exceptions as to pursers appointed or to be appointed, on distant service. In 1849 there was neither district judge nor district attorney to approve the sureties of Acting Purser Van Nostrand.

The power of the President to make rules and regulations for the navy and the army, not contravening the Constitution and the laws, but purely executive and administrative, has been adjudged by the Supreme Court of the United States in the cases of *The United States vs. McDaniel* (VII Peters, 14); *United States v. Eliason* (XVI Peters, 301); *Gratiot vs. United States* (XV Peters, 370, 371, 373, 375); *United States vs. Freeman* (III Howard, 567).

The validity of such regulations is alluded to and acknowledged in the third section of the act of March 3rd, 1839, and in the second section of the act of August 23rd, 1842 (V Stat. at Large, p. 349 and p. 510).

The Secretary of the Navy is the regular constitutional organ of the President of the United States for the administration of the naval affairs of the Government. The President is the Commander-in-chief of the Navy and Army.

Commander Jones was not at liberty to question or defy the regulations promulgated by the President of the United States, nor to

disobey the orders issued to him from the Navy Department. Such acts would have been breaches of proper discipline and disorganizing. (United States *vs.* Eliason, XVI Peters, 302.)
 22q Such disobedience might have subjected Commodore Jones to the penalty of "death, or such other punishment as a court-martial shall inflict," as enacted by the 14th article of the rules and regulations adopted by Congress for the government of the navy (act of 23d April, 1800, 11 Stat. at Large, p. 47).

II. I proceed now to consider the second question namely, whether Mr. Price is entitled in law to be credited by the Government with the sum of money paid by him to Mr. Van Nostrand on the 14th of January, 1850, or in other words, whether the Government and through the Government the sureties of Van Nostrand, are responsible to Mr. Price for this money.

It may be assumed as a general doctrine of administrative law that public officers, either of deposit or disbursement, can make the Government and their sureties, responsible only for *official* acts.

As a plain corollary from this doctrine it may in like manner be assumed that, if any citizen of the United States deposit his own private money for safe keeping, or for transmission and remittance, in the hands of a public officer, such as a collector of customs, and assistant treasurer of the United States, a paymaster in the army or a purser in the navy, no liability in the premises can be thereby cast on the Government.

It is quite immaterial in such cases what writings may have passed between the depositor and the bailee, what engagements the latter may have entered into with the former. No officer of the Government can bind the Government except in things, and to the extent, which his official duties, under acts of Congress and the lawful instructions of the proper executive superior, may authorize and require.

This doctrine, with all its incidents and consequences, is no peculiar privilege or claim of right on the part of the Government; but belongs to the ordinary question of the power of an agent to bind his principal.

22r A master, by the general rules of law, is liable for the acts of his servants, if done by his command, either expressly, given or implied, but not otherwise. (1 Blacks. Comm., 429.)

Therefore, the Supreme Court of the United States says:

It is by no means true that the acts of agents derive their validity from professing, on the face of them, to have been done in the exercise of their agency. The liability of the principal depends upon the facts.

1. That the act was done in the exercise; and 2, within the limits of the powers delegated. (Mechanics' Bank *vs.* Bank of Columbia *v.* Wheaton, 326. See also Foster *vs.* Essex Bank, XVII Mass. R., 479.)

This rule applies to all cases in which the official acts of an agent are to be distinguished from his private or personal acts whether he be the agent of an ordinary principal, or an officer of the Government.

It seems undeniable that this money in the present case was the private funds of Mr. Price. He, himself so declares, and the accounts as stated by the second auditor, confirm his declaration.

The present inquiry, therefore, must be a special one—whether the money paid by Mr. Price to Mr. Van Nostrand on the 13th of January, 1850, was received by the latter officially, and according to law, for official purposes.

Now the 26th of the regulations of the navy contained in the Blue Book, so called, is in the following words:

“No purser shall draw money at any time or place without the approval and signature of his commanding officer.” (American State Papers, Naval Affairs, p. 527.)

This regulation is imperative, absolute, without qualification of circumstances. I comprehend the subject-matter, for it is of no moment, so far as regards the question of the power of a purser to draw money, whether it is taken from a banker or other person
 22s on the spot, or at a distance, whether by verbal draft or by written draft, whether by payment received on the technical drawing of a bill of exchange, or, as in this case, by an implied draft on the Treasury of the United States.

The regulation is a valuable and wise one, too; it being the only effective check on the power of a purser to receive money abroad in the name of the Government.

Nothing remains, therefore, but the inquiry whether this payment to Van Nostrand was made with the written approval of the commanding officer of himself and of Mr. Price.

The order to Commodore Jones, as before given, was that Van Nostrand should receive from Mr. Price all books, papers, office furniture, and funds belonging to the purser's department at San Francisco. This order was in conformity with that from the Navy Department to Mr. Price, which was to transfer to his successor all public money and public property remaining in his hands; and the application of Mr. Price to Com. Jones thereon was for the designation of a purser to whom he might transfer the pay-rolls and accounts of the station and the Government property belonging to the office. All these documents unequivocally exclude the idea of the approval and signature of Com. Jones having been given to the payment of this money to Van Nostrand.

My opinion therefore upon the whole is:

1. That the appointment of Van Nostrand as acting purser by Com. Jones was lawful and valid under the circumstances, and that the subsequent disapproval of the appointment of Mr. Secretary Preston could not retroact to make void previous lawful acts of the acting purser, in his receipt from Mr. Price of public money and other public property, in obedience to the order of Com. Jones.

2. That the Government is not responsible for and cannot be charged with the private funds paid by Mr. Price to Van Nostrand.

22t I have the honor to be with high respect your obedient servant,

(Signed)

C. CUSHING.

Hon. James C. Dobbin, Secretary of the Navy.

STATE OF NEW JERSEY, }
 County of Hudson, } 88.

Madeline Price and Gouverneur Price, each of full age, being duly sworn according to law on their oaths respectively say: that they are defendants in the foregoing plea, and that the same is not interposed for delay, but in good faith for the causes therein set forth.

MADELINE M. PRICE.
 GOVERNEUR PRICE.

Sworn and subscribed before me this 22nd day of September, 1894.

[L. S.]

THEO. RURODE,
Notary Public of New Jersey.

We do certify that we have perused the complainant's bill in the above-stated cause foregoing, and that the above plea is well founded in point of law.

J. D. BEDLE,
 FLAVEL MCGEE,
Of Counsel with Defendants
Madeline Price and Gouverneur Price.

III. A plea identical with the foregoing, except as to the names, was filed by Francis Price, Rodman M. Price and E. Trenchard Price.

22u In Chancery of New Jersey.

Between—

ANNA M. FORREST, Administratrix of Samuel Forrest, Deceased, }
 and Charles Borchering, Receiver, Compl'ts, }
 and
 RODMAN M. PRICE ET ALS., Def'ts. }

This matter having been set down for argument upon bill and pleas and the chancellor having heard counsel and considered their arguments, and he being of opinion that the pleas should be overruled—

It is on this twenty-ninth day of July, A. D., eighteen hundred and ninety-five ordered that the defendants' pleas be and the same hereby are overruled with costs.

And it is further ordered that the defendants answer the bill within thirty days from the service of a copy of this order upon their solicitors in this cause.

(Signed)

ALEX. T. MCGILL, C.

I, Allan McDermott, clerk of the court of chancery of the State of New Jersey, the same being a court of record, do hereby certify that the foregoing is a true copy of the order overruling [SEAL.] pleas, in a cause wherein Anna M. Forrest, adm'x of Samuel Forrest, dec'd, and others, are complainants, and

Rodman M. Price, and others, are defendants, now on the files of my office.

22v In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Trenton, this first day of August, A. D., eighteen hundred and ninety-five.

ALLAN L. McDERMOTT, *Clerk.*

Filed July 31, 1895.

In Chancery of New Jersey.

Between—

ANNA M. FORREST, Administratrix of Samuel Forrest, Deceased,
and Charles Borchering, Receiver, Complainants, }
ads.

RODMAN M. PRICE ET ALS., Defendants. }

The defendants hereby appeal from the order overruling pleas in the above-stated cause dated the twenty-ninth day of July, eighteen hundred and ninety-five, and from the whole and every part thereof, to the court of errors and appeals in the last resort in all causes.

Dated August 5th, 1895.

McGEE, BEDLE & BEDLE,
Solicitors of Defendants.

We conceive there is good cause for appeal in the above-stated cause.

McGEE, BEDLE & BEDLE,
Of Counsel with Defendants.

22w We acknowledge service of the within notice of appeal, Aug. 5th, 1895.

CORTLANDT & WAYNE PARKER,
Solicitors of Complainants.

Aug. 29, '95, orig. of above ack. of ser. filed.

New Jersey Court of Errors & Appeals.

Between—

RODMAN M. PRICE ET AL., Appellants, }
and
ANNA M. FORREST, Administratrix of Samuel } Petition on Appeal.
Forrest, Deceased, *et al.*, Respondents. }

To the honorable the court of errors and appeals in the last resort in all causes:

The petition, of Rodman M. Price, E. Trenchard Price, Francis Price, Madeline Price, Gouverneur Price and Matilda Price, the appellants in the above-stated cause, respectfully shows that your petitioners find themselves aggrieved by an order made in the court of chancery on the twenty-ninth day of July, eighteen hundred and ninety-five, wherein the said Anna M. Forrest, administratrix of

Samuel Forrest, deceased, and Charles Borchering, receiver, were complainants, and the said appellants were defendants in this respect, to wit, that the said order adjudges that the defendants' pleas be overruled with costs, and that the defendants answer, plead or demur within thirty days from a service of a copy of said order upon their solicitors in said cause.

22x And your petitioners humbly appeal from said order on the ground that the same is erroneous, for that whereas the order should have adjudged that the said pleas do and each of them do stand, and be allowed, with costs to be taxed.

Your petitioners therefore pray that the said order of the said chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable court may seem meet.

Dated August 30th, 1895.

McGEE, BEDLE & BEDLE,
Solicitors for and of Counsel with Appellants.

Service acknowledged August 30th, 1895.

CORTLANDT & WAYNE PARKER, *Sol'rs.*

Usual joinder in appeal.

22y Court of Errors and Appeals in the Last Resort in All Causes
in and for the State of New Jersey.

Between—

RODMAN M. PRICE, E. TRENCHARD PRICE,
Francis Price, Matilda Price, Madeline
Price, and Gouverneur Price, Appellants,
and

ANNA M. FORREST, Administratrix of the
Rights and Credits, Goods and Chattels,
Moneys and Effects of Samuel Forrest, De-
ceased, and Charles Borchering, Receiver,
Appellees.

On Appeal from the
Court of Chancery
of New Jersey.
Final Decree.

This cause coming before the court at the November term thereof, eighteen hundred and ninety-five, upon the bill of complaint of the said Anna M. Forrest, administratrix as aforesaid, and the said Charles Borchering, receiver, complainants against the said Rodman M. Price and others above named as appellants in this court (defendants), the pleas of the said appellants, defendants below, to the said bill of complaint, and the decree of the said court of chancery of New Jersey thereupon rendered in favor of the said Anna M. Forrest, administratrix and Charles Borchering, receiver, against the said appellants, defendants below, adjudging that the said pleas of the said defendants should be and the same were thereby overruled, with costs, and that the said defendants should answer said bill within thirty days from the service of a copy of said order upon their solicitors in this cause; from which said order the said appellants made their appeal to this court,

22z

in which appeal said complainant duly joined; and the matter arising upon said appeal having been duly argued by Flavel McGee of counsel for the appellants, and Cortlandt Parker, of counsel for said appellees, and the court being of opinion that the pleas of the said appellants made in the court below were not valid in law, for that the act for the relief of Rodman M. Price passed by the Congress of the United States and approved by the President on the twenty-third of February, eighteen hundred and ninety-one, and set forth in said pleas, and each of them, did not entitle the defendants below, appellants in this court, though being and claiming as his heirs-at-law, to the payment unto them of the said sum of money mentioned in the said bill of complaint, and in said pleas, actually remaining unpaid by the Treasurer of the United States to the said Rodman M. Price at his death, but that said moneys so remaining unpaid, are payable to the said Charles Borchering, appointed receiver in the lifetime of said Rodman M. Price, deceased, as stated in said bill of complaint, of the property and things in action belonging or due to, or held in trust for, said Rodman M. Price at the date of said order appointing said Borchering receiver mentioned, and at the previous times therein mentioned.

It is now, on this second day of March, eighteen hundred and ninety-six, as yet of the term of said November aforesaid, ordered and decreed by the court that the order of said court of chancery from which appeal was taken, be and the same is hereby in all things affirmed; and that the record and proceedings in this cause be and the same is hereby ordered to be remitted to the said court of chancery, with directions to proceed therein according to law.

The above decree is in accordance with the opinion of the court to be filed, and may be entered.

JOB H. LIPPINCOTT, J.

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In Chancery of New Jersey.

Between—

RODMAN M. PRICE, E. TRENCHARD PRICE,
Matilda Price, Madeline Price, and
Gouverneur Price, Defendants,
and

ANNA M. FORREST, Administratrix of
the Rights and Credits, Goods and
Chattels, Moneys and Effects of Samuel
Forrest, Deceased, and Charles Borch-
erling, Receiver, Complainants. } Decree upon Remittitur.

Upon opening the matter this day to the court by Courtlandt Parker, of counsel for the said complainants, and it appearing that the said parties above named as defendants filed their appeal from the decree made in this cause adjudging that the pleas of the said appellants, defendants below, should be and the same were thereby overruled, with costs, and that the said defendants in this court should answer the bill of complaint in this cause within thirty days

from the service of a copy of said order upon their solicitors therein; from which said order the said defendants made their appeal to the said court of errors and appeals, in which appeal said complainant-duly joined and the matter arising thereon having been duly argued by counsel for the above-named defendants, appellants in said court of errors and appeals, and counsel for said complainants in this court, appellees, or respondents in said court of errors and appeals, and the said appeal having been determined by the said

22½ court of errors and appeals, and the proceedings having been remitted to this court to proceed further thereon according to law, and on reading the remittitur from the said court of errors and appeals whereby it appears that the said court being of opinion that the pleas of the said appellants, defendants in the court below, and therein filed in this cause, were not valid in law for that the act for the relief of Rodman M. Price, passed by the Congress of the United States and approved by the President on the twenty-fourth day of February, eighteen hundred and ninety-one, and set forth in said pleas, and each of them, did not entitle the said defendants in this court, appellants in said court of errors and appeals, though being and claiming as his heirs-at-law, to the payment unto them of the said sum of money mentioned in the said bill of complaint and in said pleas, actually remaining unpaid by the Treasurer of the United States to the said Rodman M. Price at his death, but that said moneys so remaining unpaid are payable to the said Charles Borchering, receiver in the lifetime of said Rodman Price, deceased, as stated in said bill of complaint, of the property and things in action belonging or due to or held in trust for said Rodman M. Price at the date of said order appointing said Borchering receiver, mentioned and at the previous times therein mentioned.

And it further appearing that on the second day of March, eighteen hundred and ninety-six, as yet of the term of November of said court of appeals, it was ordered and decreed by said court that the order of this court from which appeal was taken should be and the same was thereby in all things affirmed, and that the record and proceedings in this cause should be and the same *was* thereby ordered to be remitted to the said court of chancery, with directions to proceed therein according to law, with costs to be paid by the said defendants in this court to the said complainants.

22¾ It is thereupon on this nineteenth day of June, one thousand eight hundred and ninety-six, on motion as aforesaid.

Ordered, that the said decree of the said court of errors and appeals be and the same is hereby made the decree of this court.

And it is further ordered that an execution issue out of this court for the said costs according to the practice of this court.

ALEX. T. MCGILL, C.

Between—

ANNA M. FORREST, Administratrix of Samuel Forrest, Deceased,	}
<i>et als.</i> , Complainants,	
and	
RODMAN M. PRICE and Others, Defendants.	}

The joint and several answer of Madeline Price, Gouverneur Price, Francis Price, Rodman M. Price and E. Trenchard Price to the bill of complaint, in the nature of a bill of revivor, of Anna M. Forrest, administratrix of Samuel Forrest, deceased, and Charles Borchering, receiver, appointed by this court in a case in this court wherein the said Anna M. Forrest was complainant and Rodman M. Price, now deceased, and his wife, Matilda Price, were defendants.

These defendants, respectively, for answer unto the complainants' bill of complaint, or unto so much thereof as they are advised it is material or necessary for them to make answer unto, answering, say :

24

I.

That the said Madeline Price, Gouverneur Price, Francis Price, Rodman M. Price and E. Trenchard Price, are the only children and next of kin and heirs of the said Rodman M. Price, deceased.

II.

These defendants admit the filing of the original bill of complaint, and the answer thereto; the petition in that cause; the issuing of the order to show cause, founded on the petition; the appointment of said Borchering as receiver; his giving bond, and the restraining order therein mentioned, as alleged in the bill of complaint.

These defendants have no knowledge whether the said Rodman M. Price, deceased, received the moneys alleged in the bill to have been drawn by him from the Assistant Treasurer of the United States, but are informed, and believe, that moneys, to the amount therein mentioned, were drawn, but whether received by said Price or not, they do not know; but they allege that none of these moneys was received by these defendants, or any of them, either during the lifetime of said Rodman M. Price, or since his death.

They also admit that said Price did not comply with the demands of said order, by delivering over any drafts or money to the said receiver, and that proceedings were taken against him in the court of chancery, for contempt of court, in not obeying said order, and that judgment of contempt was entered therein, and that the said Rodman M. Price was very ill at the time said order was made, and that he, afterwards, died, at the date named in the bill of complaint, without such order having been executed.

They also admit that no will of the said Rodman M. Price has

25 been presented to any probate court, and say that no will was left by him, so far as they know or have any reason to believe; and also that no letters of administration have been issued upon his estate, and they say that he left no estate, so far as they know or have any reason to believe; and that nothing has ever come to them, and that no property, either real or personal, has ever come to them, or any of them, from his estate, and there is no property, of his estate to come to them, of which they are aware.

Your orators admit that the complainants are without remedy for the recovery of the money alleged by them to be due from the said Rodman M. Price, if there be any such money due, and deny that they can, by any proceeding in this court, sequester the moneys in the Treasury of the United States, mentioned in the bill of complaint, for the reasons hereinafter stated.

As to what is the disposition of the Treasury Department of the United States, or whether demand has been made upon the officers of that department, as alleged in the bill of complaint, these defendants have no knowledge.

These defendants admit that after the death of the said Rodman M. Price, they executed a power of attorney to the said John C. Fay, of Washington city, a counsellor-at-law, for the purpose of collecting for them the moneys in the Treasury of the United States, and mentioned in the bill of complaint, and assert that they were, by law, entitled so to do, and charge that they are now entitled to receive from the United States Treasury the moneys therein remaining, which are parcel of the moneys awarded by the act of Congress, set forth in the bill of complaint, and allege that at the death of the said Rodman M. Price these defendants became entitled, under the act of Congress, set forth in the bill of complaint, and hereinafter referred to, to all the moneys then remaining in the Treasury of the United States, as original takers; and, further, they are

26 advised, and charge, that there is no jurisdiction in this court to sequester the moneys remaining in the Treasury of the United States, and awarded under said act, and that the only persons to whom the same can legally be paid are those of these defendants last named, or such persons as may hold an assignment thereof, freely made by these defendants, in accordance with, and having all the formalities required by the laws of the United States.

And these defendants deny that the appointment of said receiver, and the order appointing him, worked a legal assignment by the said Rodman M. Price, deceased, to the complainant Borchertling, or conveyed to him any of the rights of any of the takers under said act of Congress.

These defendants admit that it was contended, as alleged in the bill of complaint, on the argument of the original cause, that under a proper construction of said act of Congress, the said moneys, in the case of the death of said Rodman M. Price, now deceased, passed to his children as original takers, under the description of heirs-at-law contained in said act; and they respectfully charge that that

contention was correct, and should have been adopted by the court in that proceeding.

With reference to the allegation that the action of the court and the orders thereof, in the original cause, were made known to these defendants, these defendants deny that allegation, as made, and say that while they had knowledge of the proceedings in a general way, that they did not have specific knowledge with reference thereto, nor what orders were being made, nor anything other than a general knowledge that a suit was being prosecuted against their father to recover these moneys, and that their action after his death was taken by reason of their belief in their rights as original takers under the said act of Congress, and for the purpose of recovering that which, by law, they were advised and now charge, was their right.

They respectfully deny that their action was, as alleged in the bill, in disobedience of the orders of this court, but, on the contrary, say that they were not advised of said original suit, were not served with any process or papers in the case, and were not, except in a general way, advised of its existence; and they deny that the said order to convey to the said Borchertling was binding upon them, or in anywise concluded their rights in the matter, and deny that their action in the matter was any contempt of this court, or that they were under any obligations to apply to this court in reference to these moneys.

And these defendants, further answering, say, that the facts of the case are as follows:

That Rodman M. Price, late of Bergen county in the State of New Jersey, departed this life on the seventh day of June, eighteen hundred and ninety-four, intestate, leaving him surviving Matilda C. S. Price, his widow, and these defendants, Francis Price, Madeline Price, Rodman M. Price, Gouverneur Price and E. Trenchard Price, his heirs-at-law; that the said Rodman M. Price, deceased, was not seized at the time of his death of any messuages, lands, tenements, or hereditaments in the State of New Jersey or elsewhere, and that no messuages, lands, tenements or hereditaments descended to these defendants or either of them from their said father; neither were any lands, tenements or hereditaments devised by the said Rodman M. Price, deceased, to these defendants, or either of them; and further, neither these defendants, or either of them have any knowledge, information or belief as to the personal estate of the said deceased, except that the said Rodman M. Price, deceased, had at his death, no personal estate or property whatever, as they believe, and that neither of these defendants has had or hath the possession, ownership or control of any personal estate whatever from their said father or any knowledge of the existence anywhere of any such estate; neither have these defendants or either of them, received any moneys for the Government of the United States, either through their father, Rodman M. Price, or otherwise, under or by virtue of the act of Congress referred to in said bill of complaint, which act was approved by the President, February

twenty-third, eighteen hundred and ninety-one, and of which the following is a copy :

"An Act for the Relief of Rodman M. Price."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury of the United States be and he is hereby, authorized and directed to adjust upon principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy, and acting navy agent at San Francisco, California, crediting him with the sum paid over to and receipted for by his successor, A. M. Van Nostrand, acting purser, January fourteenth, eighteen hundred and fifty, and pay to said Rodman M. Price, or his heirs, out of any money in the Treasury not otherwise appropriated, any sum that may be found due him upon such adjustment.

"Approved February 23, 1891."

But as to all moneys not actually received by the said Rodman M. Price, deceased, in his lifetime, from the Government of the United States upon the adjustment under said act, whether it be the sum of twenty-three thousand dollars mentioned in the said bill, or any other sum greater or less, actually remaining unpaid to the said Rodman M. Price at his death, these defendants, heirs of the said Rodman M. Price, deceased, referred to in said act, are entitled to thereunder by special designation in the said act, as his
 29 heirs, and the said moneys so remaining unpaid are in no way chargeable with the debts and liabilities of the said Rodman M. Price, deceased, or to any of his creditors, and that all such moneys so unpaid to the said Rodman M. Price, in his lifetime, are payable by the Government of the United States directly and exclusively to these defendants, out of any money in the Treasury and not otherwise appropriated and for the benefit of the said heirs respectively, without any claim whatsoever upon the same by the complainant. The balance unpaid as aforesaid to the said Rodman M. Price in his lifetime, and to which these defendants are entitled as aforesaid, which balance these defendants say and believe, is about twenty-three thousand dollars, is a part of the sum referred to in said act as paid over to and receipted for by A. M. Van Nostrand, acting purser, January 14, 1850.

That on or about the sixth day of December, eighteen hundred and forty-eight, in the early settlement and development of California, the said Rodman M. Price, deceased, was assigned to duty upon the Pacific coast at California as purser and fiscal agent of the Government of the United States for the Navy Department of the United States, he then being a purser in the United States Navy, and acted as such up to about December, eighteen hundred and forty-nine, or January, eighteen hundred and fifty, when he was detached by the Government of the United States from such duty and ordered to transfer all public money and public property remaining in his hands to his successor, or to such other disbursing officer of the navy as might be designated by the commanding

naval officer of the naval station at California, and immediately after such transfer to report to the city of Washington for the purpose of settling his accounts. Afterwards, in the month of December, eighteen hundred and forty-nine, A. M. Van Nostrand, referred to in the said act of Congress, became the successor of the
 30 said Rodman M. Price, deceased, in California, aforesaid, as acting purser in the Navy of the United States. Afterwards, on or about the thirty-first day of December, eighteen hundred and forty-nine, Commodore Jones of the United States Navy, commanding the United States squadron at San Francisco, California, on behalf of the Government of the United States, directed Acting Purser Van Nostrand, aforesaid, to call on Purser R. M. Price, aforesaid, and to receive from him all books, papers, office furniture, and funds on hand belonging to the purser's department at San Francisco. In accordance therewith and with the instructions aforesaid to the said Purser Price, he paid over on the thirty-first day of December, eighteen hundred and forty-nine, to the said Van Nostrand, acting purser of the United States Navy at the San Francisco station in California, the sum of forty-five thousand dollars, being all the public moneys of the United States in the hands of the said Purser Price. Afterwards, on the fourteenth day of January, eighteen hundred and fifty, the said Rodman M. Price, out of his private moneys alone and not of the Government of the United States, advanced to the said Van Nostrand, seventy-five thousand dollars, and took his receipt thereof as follows:

"SAN FRANCISCO, *January 14th*, 1850.

"Received from Rodman M. Price, purser, U. S. Navy, seventy-five thousand dollars for which I hold myself responsible to the United States Treasury Department, \$75,000. (Duplicate.)

"A. M. VAN NOSTRAND,

"*Acting Purser.*"

Which advance was without the approval and signature of Commodore Jones, the commanding officer of the said Acting Purser A. M. Van Nostrand, although the said Rodman M. Price regarded the advance as an accommodation to the Government of the
 31 United States at that time being in the early history of California.

Previous to the approval of the act of Congress aforesaid, and the adjustment of the accounts therein referred to, the Government of the United States had always declined upon request made by the said Rodman M. Price, deceased, to repay or reimburse him for the said sum of seventy-five thousand dollars, or any part thereof. The said A. M. Van Nostrand never returned or paid the said money, or any part thereof, to the said Rodman M. Price; neither did he account for the sum to the Government of the United States. Previous to the twelfth day of March, eighteen hundred and fifty-four, the Honorable Caleb Cushing, then Attorney General of the United States, and acting as such, in obedience to the request of the Honorable James C. Dobbin, then Secretary of the Navy of the United

States, investigated the claim of the said Rodman M. Price, deceased, against the Government of the United States for the reimbursement or payment to him of the said seventy-five thousand dollars by the Government aforesaid, and gave an opinion that the Government of the United States was not responsible for, and could not be charged with, the private funds paid by Rodman M. Price aforesaid to the said Van Nostrand, and without the written approval of the said commanding officer, Commodore Jones. A copy of which opinion in full is annexed to this answer making part thereof, and to which reference is made for all the facts therein stated, and for the matters of law and otherwise therein contained.

Previous to the giving of the opinion aforesaid the said Rodman M. Price, deceased, had frequently claimed of the Government of the United States the payment of the said seventy-five thousand dollars, but the said Government had always declined to pay the same; after the giving of the said opinion the Government
 32 of the United States continued to decline to pay the same, up to the time of the approval of the said act of Congress and the adjustment of the accounts therein referred to, always denying and disputing the liability of the said Government to pay the same. And these defendants say that the said claim was not a lawful claim against the Government of the United States for which it was lawfully liable; but in view of the fact that the money had been paid or advanced by the said Rodman M. Price, deceased, as aforesaid, in the belief that it would be an accommodation to the said Government in the condition of things that existed in the early history of California at that time, and in view of the fact that the said Rodman M. Price had become old, and had been in the service of the Government of the United States as a purser in the navy for many years, and also governor of the State of New Jersey, and that it was equitable and just, apart from the question of the lawfulness of the claim, that he or his heirs mentioned in the said act of Congress should be paid the said sum of seventy-five thousand dollars, the said act of Congress was accordingly passed.

In accordance with said act the Secretary of the Treasury of the United States, in or about the month of August, eighteen hundred and ninety-two, adjusted the accounts of the said Rodman M. Price, late purser in the United States Navy and acting agent at San Francisco, California, crediting him with the said sum of seventy-five thousand dollars, paid over to as aforesaid and receipted for by his successor, A. M. Van Nostrand, acting purser, January 14th, 1850, leaving the sum of seventy-six thousand, two hundred and four dollars, and eight cents found due him; the said Rodman M. Price, deceased, upon such adjustment, according to the intent and meaning of the said act, which sum includes the whole of the said seventy-five thousand dollars as a part thereof, of which these defendants admit the said Rodman M. Price, deceased, in his life-
 33-46 time, actually received four drafts from the Government of the United States, and the money therefor, amounting to forty-five thousand, two hundred and four dollars and eight cents, and that the balance thereof, which is part of the said seventy-five

thousand dollars, after deducting any other sum actually paid to the said Rodman M. Price, thereon in his lifetime by the Government of the United States, these defendants, being the heirs of the said deceased, are entitled to as aforesaid, under and by virtue of the said act of Congress and adjustment aforesaid.

Wherefore, these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

McGEE, BEDLE & BEDLE,
Solicitors for and of Counsel with Defendants.

* * * * *

(Opinion of Attorney General Cushing omitted here in printing. See side page 22*h.*)

47 In Chancery of New Jersey.

Between—

ANNA M. FOREST, Widow and Administratrix of Samuel Forest, Deceased; Charles Bor- cherling, Receiver, Complainants, and	} On Remittitur from the Court of Errors and Appeals in the Last Resort in All Causes.
RODMAN M. PRICE, FRANCIS PRICE, MADE- line Price, Gouverneur Price, E. Trenchard Price, and John C. Fay, Defendants.	

This cause coming on to be heard on bill and answer at the May term of the year, eighteen hundred and ninety-six, of the court of chancery in the presence of Mr. Cortlandt Parker of counsel with the complainants and Mr. Flavel McGee of counsel with the defendants, and the pleadings having been read, and the court being of opinion that the complainants are entitled to the relief prayed in so far as it relates to the collection by the defendants of the moneys mentioned in the bill of complaint and still in the Treasury of the United States. It is now ordered and decreed, that the said defendants and each of them be and they hereby are perpetually enjoined and restrained from making any demand upon, or application to the Government of the United States, or the Secretary of the Treasury of the United States or any officer of the said Treasury, or from receiving from the United States, or its said Secretary of the Treasury or any officer thereof, any part of the money remaining in the Treasury of

48 the United States at the time of filing said bill of complaint, and which was awarded to Rodman M. Price, deceased, as in the said bill stated, or now there remaining; and that the defendants likewise pay to the complainants or their solicitors, their costs to be taxed in this cause.

Dated the twenty-fifth day of June, one thousand eight hundred and ninety-six.

ALEX. T. MCGILL, C.

On motion of—

CORTLANDT & WAYNE PARKER,
Solicitors of said Complainants.

Filed August 30, 1896.

49

In Chancery of New Jersey.

Between—

ANNA M. FORREST, Widow and Administra- trix, etc., and Charles Borchering, Re- ceiver, etc., Complainants, and RODMAN M. PRICE and Others, Defendants.	}	On Bill, etc. Notice of Appeal.
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The defendants hereby appeal from the final decree of the chan-
cellor made in this cause and from every part thereof, to the court
of errors and appeals in the last resort in all causes.

Dated November 2nd, 1896.

McGEE, BEDLE & BEDLE,
Solicitors of Defendants.

I conceive that there is good cause for appeal in the above-stated
cause.

FLAVEL McGEE,
Of Counsel with the Defendants.

50 Court of Errors and Appeals in the Last Resort in All Causes.

RODMAN M. PRICE and Others, Appellants, and ANNA M. FORREST, Widow and Administratrix, &c., and CHARLES Borchering, Receiver, &c., Appellees.	}
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To the honorable the court of errors and appeals in the last resort
in all causes:

The petition of Rodman M. Price, Francis Price, Madeline Price,
Gouverneur Price and E. Trenchard Price, the appellants in the
above stated cause, respectfully shows:

That your petitioners find themselves aggrieved by a final decree
made in the court of chancery by his honor Alexander T. McGill,
chancellor of New Jersey, bearing date the twenty-fifth day of June,
in the year eighteen hundred and ninety-six, wherein the said Anna
M. Forrest, widow and administratrix of Samuel Forrest, deceased,
and Charles Borchering, receiver, were complainants, and Rodman
M. Price, Francis Price, Madeline Price, Gouverneur Price, E. Trench-
ard Price and John C. Fay, were defendants in this respect, to wit,
that the said decree orders and decrees that the defendants and
each of them be and they thereby were perpetually enjoined and
restrained from making any demand upon, or application to,

51 the Government of the United States, or the Secretary of the
Treasury of the United States, or any officer of the said
Treasury, or from receiving from the United States, or its said Secre-
tary of the Treasury, or any officer thereof, any part of the money
remaining in the Treasury of the United States at the time of the
filing of the said bill of complaint, and which was awarded to Rod-
man M. Price, deceased, as in said bill stated, and now there re-

maining; and that the said defendants likewise pay to the complainants or their solicitors, their costs to be taxed in said cause.

And your petitioners humbly appeal from the whole and every part of the said decree of the chancellor which decrees as aforesaid, on the ground that the same is erroneous, for that the said chancellor should have decreed that the said bill of complaint be dismissed with costs.

Your petitioners therefore pray that the said decree of the said chancellor may be reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

McGEE, BEDLE & BEDLE,
Solicitors for and of Counsel with the Petitioners.

Endorsed: Service of a copy hereof is acknowledged Nov. 13, 1896. Cortlandt & Wayne Parker, att'ys & sol'rs — appellees. Filed November 19, 1896. Henry C. Kelsey, clerk.

52 Court of Errors and Appeals in the Last Resort in All Causes.

RODMAN M. PRICE ET ALS., Appellants,	}
and	
ANNA M. FORREST, Widow and Administratrix, etc., and CHARLES Borchering, Receiver, Appellees, Respondents,	

The Answer of the Above-named Respondents to the Petition of Appeal of the Above-named Appellants.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto nevertheless, say and admit that a decree was on the twenty-fifth day of June, eighteen hundred and ninety-six, made and entered in the court of chancery in the cause for that purpose mentioned in the said petition as is therein stated, but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the said decree is agreeable to equity and they pray that the same may be affirmed with costs to be adjudged to these respondents.

CORTLANDT — WAYNE PARKER.

Endorsed: Filed Nov. 19th, 1897. Henry C. Kelsey, clerk.

53 STATE OF NEW JERSEY:

Court of Errors and Appeals, Nov. Term, 1896.

In case of—

RODMAN M. PRICE }
 and } On Appeal.
 ANNA M. FORREST. }

No. 64 of Nov. Term, 1896.

Date 11 Jan'y, 1897.

David A. Depue, presiding.

Opinion by Judge Lippincott.

Check list.	Affirm.	Rever'l.
The chancellor		
“ chief justice		
Mr. Justice Depue	1	
“ “ Dixon		
“ “ Garrison	1	
“ “ Gummere	1	
“ “ Lippincott	1	
“ “ Ludlow	1	
“ “ Magie	1	
“ “ Van Syckel	1	
Judge Barkalow	1	
“ Bogert	1	
“ Dayton	1	
“ Hendrickson	1	
“ Krueger ..	1	
“ Nixon	1	
Totals	13	

DAVID A. DEPUE.

Filed Jan. 11, 1897.

HENRY C. KELSEY, *Clerk.*

54 New Jersey Court of Errors and Appeals, March Term, 1896.

Between—

RODMAN M. PRICE ET ALS., Appellants,	}
and	
ANN M. FORREST, Administratrix of Samuel Forrest, Deceased, <i>et al.</i> , Respondents.	

1. A statute of the United States which authorizes and directs the Secretary of the Treasury of the United States to adjust the accounts of a former purser in the Navy upon principles of equity and justice and credit him with a sum of money—paid over to and receipted for by his successor in office, although such payment was without governmental authority, and directing the payment of the sum that may be found due him upon such adjustment to him, "or his heirs," is not a statute which bestows a mere gratuity or bounty, but it is the restitution of property which once belonged to him as assets for the liquidation of his pecuniary obligations, and upon its restoration it cannot be held to have assumed any new character. The words "or his heirs" are simply words of succession and descriptive of his estate in the money found to be due him and used in the statute in the sense of personal representatives and intended to secure the moneys to his estate in the event of his death before they were paid.

2. The assignment of a claim against the United States ordered by the court of chancery to be made by a debtor or his representatives, if he be deceased, to a receiver in aid of proceedings in said court by a creditor in said court to obtain satisfaction of a judgment at law recovered against the debtor is not prohibited by and is not a nullity under the provisions of section 3477 of the Revised Statutes of the United States.

3. Such an assignment to the receiver and assignments to him by operation of law in such proceedings by virtue of his appointment as receiver vesting in him under the powers with which he is clothed the right to take, receive, sue for, and distribute according to law; and the orders of the court from which he derives his appointment is an exception to the provisions of section 34 of the Revised Statutes of the United States requiring assignments of such claims or powers of attorneys to receive the same, to be acknowledged by the persons executing them and to be certified by the officer taking such acknowledgments.

4. The objects of section 3477 of the Revised Statutes of the United States are that the Government may not be harassed by multiplying the number of persons with whom it has to deal, and that it might always known with whom it was dealing until a contract is completed and an adjustment and settlement was made; and none of these evils can happen upon an assignment for the benefit of the creditors of a claimant, either expressly ordered to be made by a court having jurisdiction or resulting by operation of law.

56 5. The court of chancery has jurisdiction to determine the right of the distribution of such claim in payment and sat-

isfaction of a judgment debt due from the claimant to his creditors whenever the proper parties are before the court and the point decided be within the issue made by the pleadings.

On appeal from the order of the chancellor overruling the pleas of the appellants.

The bill of complaint in this case is filed by Anna M. Forrest, administratrix of Samuel Forrest, deceased, and Charles Borchering, receiver of the goods and chattels, rights, credits, and property and effects of Rodman M. Price, deceased, against Rodman M. Price and others, the children of the said Rodman M. Price, deceased, as defendants. To this bill of complaint two joint and several pleas have been filed, alike in form and substance, setting up in each precisely the same defense to this suit in equity.

This bill of complaint was filed July 5th, 1894.

It states that it is filed by permission of the court as a bill of revivor and original bill, in the nature of a supplement to a bill which was filed on the 30th day of May, 1874, by the complainant against Rodman M. Price, of Bergen county, in the State of New Jersey, now deceased, jointly with his wife, Matilda C. S. Price, and Francis Price. It is alleged that by such former bill of complaint it was set forth that on the second day of June, A. D. 1857, in the

57 supreme court of New Jersey, the said Samuel Forrest in his lifetime recovered a judgment against Rodman M. Price, now deceased, for the sum of \$17,000 debt and \$78.04 costs of action, and that upon said judgment a *fiery facias* was sued out and returned unpaid and unsatisfied; that on November 7th, 1860, the said Forrest died intestate, with the said judgment still remaining unpaid and unsatisfied; that on about January 2nd, 1874, administration of the goods and chattels, rights and credits, which were of the said Forrest, deceased, was granted to the said Anna M. Forrest by the ordinary of the State of New Jersey; that shortly afterwards said judgment was revived by a writ of *scire facias*, and that on or about April 14th, 1874, another writ of *fiery facias* was duly and regularly issued upon said revived judgment, which also was returned unpaid and unsatisfied, and that thereupon the former bill of complaint by said Anna M. Forrest as administratrix aforesaid was filed, alleging that the said Rodman M. Price, since deceased, was possessed of certain moneys, property, and things in action, either in his own possession or held in trust for him by the other defendants, and praying for the appointment of a receiver of such property and things in action, and that the same be appropriated to the payment of the judgment aforesaid and costs thereof therein set forth, with the appropriate prayer for injunction and process.

The bill of complaint in this case further states that on or about December 4th, 1874, the defendants in said former bill filed their
 58 answer thereto, in which the recovery and force of the judgment against Rodman M. Price at the suit of said Forrest was admitted, but denying circumstantially that the said Rodman M. Price was possessed of any of the property as claimed in

such bill of complaint, or that any property whatever was held by him or in trust for him by the other defendants, and charging that the said Price had no title to or interest in any of the property then standing in the names of the other defendants. The bill further states that after the filing of this answer the cause slept until August 9th, 1892, when the said Anna M. Forrest, administratrix aforesaid and one of the complainants in this cause, filed a petition supplementary to the bill, reciting that several writs of *fieri facias de bonis et terris* had been issued upon the judgment aforesaid, all of which had been returned unsatisfied for want of any goods or lands whereon to make a levy out of which to make the debt and costs. By this petition, as it appears by the bill of complaint, it was charged that the sum of forty-five thousand dollars was about to be paid to the said Price by the officers of the Treasury of the United States, being the sum found to be due him by an accounting between the said Price and the Government of the United States, and that such sum was to be paid by the delivery to Price or his attorney of a draft of the Treasurer of the United States or some other negotiable surety made and issued by the financial officers of the Government of the United States, payable to the order of said Price, and that said draft or other negotiable security was to be made and the transaction closed upon the fifteenth of the then month of

59 August. By this petition it was charged that said Price, if he received such money, would put the same beyond the reach, and that the same would not be available to satisfy said judgment, and she therefore prayed that an injunction might issue to prevent said Price from endorsing such drafts to any one but the complainant in payment of said judgment, and that a receiver of such fund or draft or negotiable security be appointed, and that said Price be directed immediately upon the receipt of the same by him to endorse the same to said receiver, to the end that the amount thereof might be received by such receiver as an officer of the court of chancery, to be disposed of accordingly to law and the direction of that court. The bill further recites that upon such petition being filed on August 8th, 1892, an order to show cause on that day was made why the prayer of the petition should not be granted, and why an injunction should not issue and a receiver be appointed according to the tenor of the prayer of said petition, and further directed that the said Price be restrained and enjoined from making any endorsement of any such draft, drafts, or other negotiable security of the United States, as was set forth in said petition. This order was made returnable on September 12th, 1892.

The bill of revivor further states that a certified copy of such order under the seal of the court of chancery was served on August 10th, 1892, on the said Price; yet on the fifth day of September, 1892, he received from the Assistant Treasurer of the United States
60 four several drafts—one for the sum of \$2,704.08, one for \$13,500, one for \$20,000, and a fourth for \$9,000—and that on different dates between the date of the reception by him of the drafts and the third day of October, 1892, he endorsed such drafts, and collected the proceeds thereof, and devoted the same to his own

use, and that on the third day of October he filed an answer to the petition, which, without admitting the endorsement of said drafts, alleged that the judgment of Forrest against him had been paid, and, further, that there was a sum of money due him from the United States, voted to him or his heirs by Congress, and that about \$45,000 of it was paid or about to be paid, but that even if the said judgment was still unpaid and valid against him, yet this sum of money so voted to him was not amenable to the payment of such judgment, and could not be lawfully paid to any receiver or otherwise appropriated to that purpose.

The bill further alleges that such proceedings were had upon the former bill and the petition aforesaid that after the hearing on said rule to show cause, on October 10th, 1892, Charles Borchering was duly appointed receiver of the property and things in action belonging to or due to or held in trust for said Price at the time of the issuing of the executions on such judgment or at any time afterwards, and especially of the four drafts aforesaid, with authority to the receiver to possess, receive, and in his own name to sue for such property and things in action and to hold such drafts subject to the further order of the court; that such receiver was required to give

61 bonds in the sum of \$40,000 for the faithful performance of his duties, and that in and by said order the said Price was enjoined and restrained from intermeddling with said receiver in regard to said drafts and to put the same in the possession of the receiver if the same were in the possession of said Price or under his control, provided that if said drafts, excepting the one for \$13,500, should be delivered with the endorsement of said Price to the clerk of the court of chancery on or before October 13th, then the order should be void. He was also enjoined and restrained from any endorsement or appropriation of said drafts otherwise than to said receiver or to the clerk as aforesaid. The receiver gave the bond required and filed his official oath and entered upon his duties. The drafts were not so delivered by Price, whereby the order remained in full force. This order was served upon Price with a written demand that if the drafts or either of them were not in his physical possession, but were held by him or subject to his control, whether alone or jointly with any other person, that he give his consent and order in writing for their delivery to the receiver or to his order, and that he do all things necessary within his power to put the receiver in possession and control thereof. The copy of the order and the demand was served upon Price shortly after the order was made, elsewhere than in the State of New Jersey, which was the place of his abode and residence, for the reason that he was not to be found within that State until July 22nd, 1893, when it was served upon him again. On the — day of —, 1892, an attachment was issued against Price for 62 contempt of court in disobeying the order of August 8th, 1892, and after due proceedings he was convicted of such contempt, and by order dated May 18th, 1893, he was ordered to pay to the receiver the sum of over \$30,000 of this fund aforesaid,

together with a small fine, and that upon failure to comply with such order that he be imprisoned until said order was performed.

The bill further alleges that the amount of such drafts *were* a part of a certain debt of \$76,000 or thereabouts awarded to the said Rodman M. Price by the officers of the Treasury Department of the United States under an act of Congress passed February 23rd, 1891, and agreed to be paid to him in conformity with the directions contained in such act, and that the balance of said \$76,000, after the drafts were delivered to Price, was to be retained to answer a counterclaim of the United States for a debt alleged to be due by Price to the United States, but after investigation such determination to retain such balance was reconsidered, and that the Treasury Department were about to pay unto the said Price the sum of \$31,000, the balance of said fund, and that said Price and his agents were actively seeking to obtain payment of the same, and that pending the proceedings to compel the said Price to consent that the Treasurer of the United States pay to said receiver such balance the said Price, on the eighth day of June, 1894, departed this life intestate, and that no letters of administration have ever been granted to any one upon his estate.

63 The bill further alleges a further payment of \$9,000 was made out of said fund to said Price, thus reducing the balance of said fund apparent on the books of the Treasury Department of the United States to the sum of about \$22,000, and that demand had been made by the receiver upon the Treasurer of the United States for the payment to him of said balance; that the Treasurer neither consents or refuses to make such payment, but is willing to abide the determination of some lawful tribunal of the rights of the receiver in the premises, and is willing to pay over the balance of such fund in accordance with such determination, and it is believed by the complainants that on the decree of the court of chancery being made that the receiver is entitled to said balance, and notice thereof duly given, that the Treasury Department will respect such decree and pay over to the receiver the balance of said fund.

The bill further alleges that the children of said Price, as his heirs-at-law, are endeavoring, upon their construction of the provisions of the act of 1891, to obtain the payment of this balance to them personally, on the ground that under the act of Congress awarding this amount to Price or "his heirs" the money belongs to them as his heirs-at-law and not as representatives of his estate, and that the receiver has no right in law thereto, and that they have authorized John C. Fay, of Washington city, by power of attorney to apply for and receive such balance in their behalf, and that they are now pressing their claim, as aforesaid, with the Secretary of the Treasury for such payment.

64 Administration *ad prosequendum* of the estate of Price has been granted to Allan L. McDermott, the clerk of the court of chancery, who is joined as a defendant simply for the purpose of this suit, to subject this fund to the payment of the debts of the intestate.

Prayer is made that injunction issue against the defendants receiving any moneys of the officers of the Treasury of the United States; that the defendants be decreed to pay to the receiver any part of said money which they respectively have received or hereafter may receive.

The defendants have not answered this bill, but have filed two pleas thereto, one the joint and several plea of Madeline Price and Governuer Price, children of Rodman M. Price, deceased; the other is the joint and several plea of Francis Price, Rodman M. Price, and Trenchard Price and Matilda Price, other children of Rodman M. Price, deceased. These pleas are alike in form and substance. The act of Congress approved February 23, 1891, is set out, and under it these defendants, as they heirs-at-law of Rodman M. Price, deceased, contend that they are entitled to the balance of this fund.

The facts set out by the defendants in these pleas are substantially that the said Rodman M. Price had no real or personal estate or property at the time of his death, and that they have not had nor do they now have the possession, ownership, or control of any personal estate from their said father, and that they have not received any moneys from the Government of the United States through their said father or otherwise under the act of Congress of February 23, 1891.

The pleas set out the act of Congress as follows, to wit:

"An act for the relief of Rodman M. Price."

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury of the United States be, and he is hereby, authorized and directed to adjust, upon principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy and acting navy agent at San Francisco, California, crediting him with the sum paid over to and receipted for by his successor, A. M. Van Nostrand, acting purser, January fourteenth, eighteen hundred and fifty, and pay to said Rodman M. Price or his heirs, out of any money in the Treasury not otherwise appropriated, any sum that may be found due to him upon such adjustment. Approved February 23, 1891."

The pleas further set forth that on or about the sixth day of December, 1848, in the early settlement and development of California the said Rodman M. Price, deceased, was assigned to duty upon the Pacific coast, at California, as purser and fiscal agent of the Government of the United States, for the Navy Department of the United States, he then being a purser in the United States Navy and acting as such up to about December, 1849, or January, 1850, when he was detached by the Government of the United States from such duty and ordered to transfer all public money and public property remaining in his hands to his successor or to such other disbursing officer of the navy as might be designated by the commanding naval officer of the naval station of California, and immediately after transfer to report to the city of Wash-

ington for the purpose of settling his accounts. Afterwards, in the month of December, 1849, A. M. Van Nostrand, referred to in the said act of Congress, became the successor of the said Rodman M. Price, deceased, in California aforesaid, as acting purser in the navy of the United States. Afterwards, on or about the 31st day of December, 1849, Commodore Jones, of the United States Navy, commanding the United States squadron at San Francisco, California, on behalf of the Government of the United States directed Acting Purser Van Nostrand aforesaid to call on Purser R. M. Price aforesaid and receive from him all books, papers, office furniture, and funds, and anything belonging to the purser's department at San Francisco. In accordance therewith and with the instruction aforesaid to the said Purser Price, he paid over on the 31st day of December, 1849, to the said Van Nostrand, acting purser of the United States Navy, at San Francisco station, in California, the sum of \$15,000, being all the public moneys of the United States in the hands of said Purser Price. Afterwards, on the 14th day of January, 1850, the said Rodman M. Price, out of his private moneys alone and not of the Government of the United States, advanced to the said Van Nostrand \$75,000, and took his receipt therefor as follows:

"SAN FRANCISCO, *January 14, 1850.*

67 "Received from Rodman M. Price, purser, U. S. Navy, \$75,000, for which I hold myself responsible to the United States Treasury Department. \$75,000.00. (Duplicate.)

"A. M. VAN NOSTRAND,

"Acting Purser."

Which advance was without the approval and signature of said Commodore Jones, commanding officer of the said Acting Purser A. M. Van Nostrand, although the said Rodman M. Price regarded the advance as an accommodation to and made for the benefit of the Government of the United States, to be used by the said Van Nostrand, as acting purser of the United States Navy, for the payment of the expenses of the navy at that station. The pleas fully exhibit the difficulties and embarrassments of the United States in obtaining funds for these purposes on the Pacific coast at this period of the history of California. The said A. M. Van Nostrand never returned or paid the said sum of money or any part thereof to the said Rodman M. Price, neither did he account for this sum to the Government of the United States.

In the settlement of the accounts of the said Rodman M. Price he made claim on the Treasury Department for a credit or allowance for the said sum of \$75,000, and has continued ever since to make such claim. In the year 1854 the then Attorney General of the United States, acting under instructions from the Secretary of the Navy to investigate the claim of said Rodman M. Price for the reimbursement or payment to him of said \$75,000, gave an opinion that the Government of the United States was not responsible for and could not be charged with the private fund paid by Rodman M.

68 Price aforesaid to the said Van Nostrand, and which was so paid without the written approval of the said commanding officer, Commodore Jones. Annexed to the pleas is a copy of this opinion, with all other proceedings taken in this matter of the claim of the said Rodman M. Price against the Government of the United States, by which it is shown that the money, said sum of \$75,000, was paid and advanced by the said Rodman M. Price in the belief that it would be an accommodation to the said Government in the condition of things that existed in the history of California at that time, and that the same was advanced and paid to his successor in office in good faith for the use of the Government of the United States and the United States Navy, and that apart from the lawfulness of the claim it was one equitable and just to be allowed in the settlement of his accounts. The pleas further allege that in accordance with the said act of Congress the Secretary of the Treasury of the United States in August, 1892, adjusted these accounts of the said Rodman M. Price, as late purser in the United States Navy and acting navy agent in San Francisco, California, in accordance with the act of 1891, and credited him with the said sum of \$75,000 paid over as aforesaid and receipted for by his successor, A. M. Van Nostrand, acting purser, January 14, 1850, leaving the sum of \$76,204.08 found due him, and admits that he received four drafts from the Government of the United States and the money therefor amounting to \$45,204.08, and that the balance thereof of \$31,000, which was a part of the said \$75,000, after deducting any other sum actually paid to the said Rodman M. Price thereon in his lifetime by the Government of the United States, the defendants in said pleas named claim that they are entitled to payment thereof to them under and by virtue of the said act of Congress and the adjustment aforesaid.

69 Argument was had before the chancellor on the bill and pleas, and on July 29, 1895, by order of the chancellor the pleas were overruled, with costs, from which order an appeal has been taken to this court.

McGee, Bedle & Bedle, for appellants.

Cortlandt & Wayne Parker, for respondents.

The opinion of the court was delivered by LIPPINCOTT, J.:

The first insistent of the defendants below and appellants in this court is that as heirs-at-law of Rodman M. Price, deceased, they are entitled under the act of Congress of 1891 to the balance of the moneys in the Treasury of the United States, amounting to about \$22,000, as admitted by the pleas in this suit; that Congress by this act was bestowing a gratuity and was at liberty to select its beneficiaries, and that in so doing it directed certain specific persons to whom it should go, and that by the directions of this statute, in his lifetime, it was a gratuity to Price, and in case of his death before payment then with the same qualities the gift devolved upon the persons who at the time of his death were his heirs.

The facts set forth in the pleas giving rise to the act of Congress effectually dispose of this insistent, and in the consideration of the pleas the act must be construed to some extent with reference to

those facts, especially so far as there may exist in the statute any reference to them.

70 The facts in these pleas exhibit a great pertinacity on the part of Mr. Price, continuing through a lifetime almost, in pressing his claim for money believed by him to be due from the Government of the United States. They were moneys which indisputably were paid out for the benefit of the United States, so admitted upon all sides and in all proceedings, but which because of the want of the technical approval of his superior officer before the advance was made by him became unallowable in the adjustment and settlement of his accounts with the Government, but the justice of which as a due to him was distinctly recognized in the act of Congress directing its adjustment and payment, either in whole or in part, upon principles of equity and justice.

The act of Congress directs the Secretary of the Treasury "to adjust upon principles of equity and justice, the accounts of Rodman M. Price, late purser in the United States Navy, and acting navy agent at San Francisco, crediting him with the sum paid over to and receipted for by his successor, January 14, 1850, and to pay to said Rodman M. Price or his heirs, out of any money in the Treasury not otherwise appropriated, any sum that may be found due to him upon such adjustment."

It was upon these "principles of equity and justice" that the Secretary of the Treasury of the United States adjusted his accounts as an officer of the United States having accounts with the Government.

71 A reading of this statute at once indicates that Congress was not dealing with one upon whom a mere gift for honorable services was to be conferred. It was dealing with a claim of one who had expended his private moneys for the benefit of the Government in an emergency which demanded or justified this expenditure. Under this act, couched in the language in which it is, it cannot, as it seems to me, be contended that the Government of the United States was conferring upon Price a bounty. It was restitution to him of moneys which he had advanced and which he believed at the time the advance was made would be at once repaid in the settlement of his accounts as a disbursing officer of the United States Navy. I think that the act of 1891 was based upon the idea that the claim was a moral and equitable obligation, if not a legal one, on the part of the Government for money to pay him the money "found to be due him" upon an adjustment of his accounts, according to principles of "equity and justice," and not upon any considerations that a gift or gratuity was being conferred upon him.

The learned chancellor, in his opinion in *Forrest vs. Price*, 7 Dick., 16-26, after reviewing the facts in that case, which are precisely the same in substance as those set forth in the pleas herein, so far as Price in his lifetime was concerned, says: "I do not find in this situation even the bounty of a grateful Government partaking of the character of a pension or reward for a meritorious deed, but simply the restitution of property which had once belonged to the defendant as assets for the liquidation of his pecuniary obliga-

72 tions, and I fail to understand how upon its restoration to the defendant it can be held to assume a new character." In that case this question was elaborately discussed by the chancellor, and his views of the nature of the obligation of the Government of the United States, which was the foundation of this statute, can be fully approved.

So far as the devolution of this money is concerned, upon the facts set up in the pleas and the situation as there expressed, the statute of 1891 cannot well bear any other construction than the one that the payment was intended to benefit the estate of Price and to be within the reach of his creditors. The heirs of Price were in no sense personally intended to be the beneficiaries of the United States by way of gift or gratuity to them as such. The language of the act could only be fulfilled by a payment to Price. If it could be called a gift it occurred at the passage of the act, and the act in no sense intended that the heirs of Price were to be included in the gratuity. But the reason of the act is such as to reveal the intention of Congress to recognize an obligation on the part of the Government, and upon its ascertainment to pay it to Price or his representative in the same manner as a debt is paid to any one. In his accounts with the Government upon such ascertainment he was credited with the amount found to be due. The act in its terms speaks of the application of the principles of equity and justice in the adjustment of his accounts as "late purser of the United States Navy and acting naval agent at San Francisco." The meaning of this statute is 73 to be gathered from the construction of the whole statute, in view of the circumstances which led to its enactment, and the object to be accomplished.

The chancellor, in his opinion in the case in 7 Dickinson, page 16, to which reference has been made, says: "But it affirmatively appears that the money of which the statute authorizes payment, though not a legal claim, is not a pure governmental bounty. The provision in the act for the relief of the defendant Price that payment should be made to him or his heirs has been urged as indicative of the legislative intention that the payment was not intended to benefit creditors. I do not so understand the act. The expression 'or his heirs' was undoubtedly a provision against death before the day of payment, and there can be no substantial doubt that it is used in the sense of personal representatives, the thing dealt with being personality, and appears in the act to secure the moneys to his estate in the event of his death before they are paid."

The same holding was made by the Comptroller of the United States in his written opinion on this question of date of July 11, 1894, in the determination that the word "or" in the words "or his heirs" should be construed to mean "and." Whilst this is the fair interpretation of this statute, taken as a whole, yet it seems to me to be immaterial whether such meaning be given to the word "or"

74 or not, for it must be that a fair and reasonable construction of this act that its meaning is that the moneys were to be paid to Price in his lifetime, and after his death to his heirs-

at-law, and these words "his heirs" are simply words of succession and description of his estate in the money, and they are in this statute as representatives of his estate only.

Nevison vs. Taylor, 3 Halst., 43.

Holcomb vs. Lake, 1 Dutch., 605.

S. C., 4 Zab., 688.

Den vs. English, 3 Harr., 280.

Den vs. Allaire, 20 N. J. Law (Spencer), 19.

Engelfried vs. Woelpart, 1 Yeates, p. 41-56.

Winterfield vs. Stauss, 24 Wis., 394.

These cases illustrate the construction of the word "or" into "and," to give effect to the fair intention of the legislator. The many cases cited in the American and English Encyclopædia of Law, volume 17, title "or," pages 218 to 222, fully illustrate the instances of this construction.

It will be noticed that in the case of *Emerson vs. Hall*, 13 Peters, 409, which is a case relied on by the defendants, the gift under the statute was by the express terms of the act of Congress payable to the legal representative of Emerson and Lorraine, respectively, and the title of the act was "An act for the relief of Beverly Chew and the heirs of William Emerson, deceased, and the heirs of Edward Lorraine, deceased." 6 U. S. Stat., 464. The body of the act expressly directs that it shall be paid to their "legal representatives." An examination of the case shows that the moneys could never, under the law, be paid to Emerson and Lorraine, and that, as to their heirs, it was a gratuity conferred upon them by Con-

gress. The court in that case held that the act evinced a purpose of Congress to make a gift to these heirs; that there was no debt of the Government, and that the act was simply a bounty, and that under statute the money had reached its proper destination when it was withheld from the creditors of Emerson; and this is founded in the fact that the institution by Emerson and Lorraine, as officers of the United States Navy, of the proceedings of condemnation of the slave-trading vessel and the slaves therein captured was one purely voluntary on their part and not at all in the line of their duty towards the Government.

The advance of money by Price was a benefit to the Government and necessary to be made for the expenditures of the United States Navy.

This fund and the part remaining unpaid therefore became a part of the general estate of Price, and thus was liable for his debts, to be distributed according to the laws of the State of New Jersey, the place of his domicile at the time of his death.

Another question has been made as to the jurisdiction of the court of chancery over the parties and the subject-matter involved. The pleas set up the claim of the defendants to this fund in preference to the creditors of Price, and the bill avers and the pleas admit that the defendants are endeavoring to secure payment of this fund to them, and to hinder, delay, and finally obstruct the complainants from recovering the same, to be appropriated to the pay-

76 ment of the debts of Price. It must be remembered that the suit is not against the United States nor directly against the fund, but it is a proceeding against the parties, and operating upon them, to compel them to an assent to the proper distribution of the fund according to the laws of the domicile of the intestate, and to give effect to the assignment by operation of laws for this purpose to the receiver. The decree of the court cannot operate upon the fund to any greater extent than may be permitted by the authorities of the United States Treasury, but that furnishes no reason, if the proper parties are before the court, why the court should not decide upon the issues raised by the pleadings. Besides, the previous discussion and decision of the merits of this matter fully answers the insistments of the defendants. The defendants have applied to the officials of the Treasury to have this money paid over to them as the heirs of Price. The Comptroller of the Treasury has refused this application and awaits the decision of the court of chancery, which has assumed jurisdiction of the case, as between the defendants and the complainants representing the judgment creditor of Price.

So far as this suit is concerned, as soon as the United States Treasury passed to his credit, in the accounting, the moneys the sum thereof became a debt due to him or a legal obligation in his favor, and which he had the legal right at once to reduce to his possession, which possession he could not deny in a suit against him by the receiver. This money was held by Price without authority to controvert the proposition that in law he had assigned it to the receiver. If the moneys were in private hands instead of in the hands of the Government the receiver could bring suit for it, and neither Price nor his personal representatives could deny that it had been legally assigned to the receiver and had passed to him, and as to the balance of the \$23,000 still remaining to his credit in the United States Treasury, it is not the right of the defendants, as his personal representatives, to deny that it has been legally assigned to the receiver. The effect of the statute was to render this money to the estate of Price, and the defendants in suit here set up a distinct claim to it, and the court can treat them as if they were in its possession in order to compel them to assign it to the receiver or to give effect to the assignment to him by operation of law. *Harrison vs. Maxwell*, 15 Vroom, 319; *Wilkinson vs. Rutherford*, 20 Vroom, 245; *Williams vs. Heard*, 140 U. S., 529.

And the heirs-at-law under their claim to these moneys are just as much subject to the jurisdiction of this court as Price would have been in his lifetime. The discussion, and the principles laid down, and the conclusion to which the learned chancellor arrived in the suit of *Forrest vs. Price*, 7 Dickinson, page 16, in these respects are distinctly approved.

These conclusions would seem to dispose of the case. But it may be well to expressly notice a further insistment by the defendants, and that is that the receiver appointed by the proceedings under the original bill can have no standing to take and receive these moneys; that any assignment of a claim made

contrary to the provisions of section 3477 of the Revised Statutes of the United States, which requires the assignment to be clothed with certain formalities, is void. Whilst this is true as to assignments of claims between the parties made under that statute, but the receiver appointed in this suit in equity takes title from Price or the defendants by operation of law, assisted by such actual assignment as may be decreed by the court, and of such assignments the statute to which reference is made is not prohibitive. The receiver is an officer, an assignee, receiving his power from a court of competent authority and jurisdiction, and the title of Price or the defendants is vested in him by operation of law to take, have, and possess the property and things in action of Price to satisfy the judgment and decrees of the court from which he derives his authority. It is entirely within the power of the court of chancery, in order to render effective its decree of appropriation of the fund to the payment of debts, to order the defendants to actually make and execute a formal assignment to fully accomplish the object of the decree.

These classes of assignments to claims against the Government of the United States has been upheld and sustained wherever the question has been fairly before the Court of Claims or the Supreme Court of the United States.

79 Thus full effect is given as well to assignments ordered by courts of competent jurisdiction as to those assignments which result by operation of law by reason of the appointment of a receiver for the purposes contemplated by the present suit.

Under the authorities a receiver appointed by a court of competent jurisdiction will be sustained in asserting the same title to choses in action which might, as against the Government, be asserted by assignees in bankruptcy under deeds of general assignment.

It may be well, in the light of authority, to consider the effect of section 3477 of the Revised Statutes of the United States, so long as it is contended under it that the court is without any jurisdiction to compel the defendants to execute an assignment or to give effect to any assignment by operation of law.

The statute is entitled "An act to prevent fraud upon the Treasurer of the United States," approved February 26, 1853, 10 U. S. Statutes, 170, and is in the following language:

"All transfers and assignments made of any claim upon the United States, or any part or share thereof or interest therein, whether absolute or conditional, and whatever may be the consideration thereto, and all powers of attorney, orders, or other authorities for receiving payment of any such claims or any part or share thereof, shall be absolutely null and void unless they are freely made and executed in the presence of at least two attesting

80 witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney must recite the warrant for payment and must be acknowledged by the person making it before an officer having authority to take acknowledgement of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the

time of the acknowledgement, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same."

The true meaning and purpose of Congress in this enactment was passed upon by Mr. Justice Woods in *Hebbs vs. McLean*, 117 U. S., 576, who says that the object of the statute was "that the Government might not be harassed by multiplying the number of persons with whom it has to deal and might always know with whom it was dealing until the contract was completed and settlement made."

In the case of the *United States vs. Gillis*, 95 U. S., 416, Justice Strong distinctly recognized that certain claims under this statute were assignable and might be sued in the Court of Claims in the name of the assignee, without undertaking to determine what claims might be assigned, and says: "That there may be such claims is clearly stated in the act of 1853, and their devolutions of title, by force of law, without any act of parties or voluntary assignments, compelled by law, which may have been in view."

81 In the case of *Irwin vs. U. S.*, 97 U. S., 392, the court said: "The act of Congress of February 26, 1853, to prevent frauds upon the Treasury of the United States, which was the subject of consideration in the *Gillis* case, applies only to cases of voluntary assignments of demands against the Government and does not embrace cases where there has been a transfer of title by operation of law. The passing of claims of heirs, devisees, or assignees in bankruptcy are not within the evil at which the statute aimed, nor does the construction given by this court deny to such parties a standing in the Court of Claims."

The Supreme Court of the United States has sustained partial payments made at the Treasury to an assignee. *McKnight vs. United States*, 98 U. S., 179.

It has been held that a general assignment made for the benefit of creditors, including all rights, credits, effects, and property of every description, covered what might be due to the assignor under a contract with the Government for carrying the mail. In *Goodman vs. Niblack*, 102 U. S., 556, Mr. Justice Miller, in view of the language of the opinion in *Spofford vs. Kirk*, 97 U. S., 484, says: "We held it did not include a transfer by operation of law, or in bankruptcy, and we said it did not include one by will. The obvious reason of this is that there can be no purpose in such cases to harass the Government by multiplying the number of persons with whom it has to deal, nor any danger of enlisting improper influences in advocacy of the claim, and that the exigencies of the party
82 who held it justified and required the transfer that was made."

In what respect does the voluntary assignment for the benefit of his creditors, which is made by an insolvent debtor of all his effects, which must, if it be honest, include a claim against the Government, differ from the assignment which is made in bankruptcy? There can here be no intent to bring improper means to bear in establishing the claim, and it is not perceived how the Government can be embarrassed by such an assignment. The claim is not specifically mentioned, and is obviously included only for the

just and proper purpose of appropriating the whole of his effects to the payment of all his debts. We cannot believe that such a meritorious act as this comes within the evil which Congress sought to suppress by the act of 1853."

Assignments of moneys due from the Treasury Department to receivers appointed under supplementary proceedings for the benefit of a creditor have been upheld by the Court of Claims. I think it may be said that the cases show that they have been uniformly sustained by that court as well as by the Supreme Court of the United States. *Redfield, receiver, vs. United States*, 27 Court of Claims Reports, 393. In this latter case the plaintiff was a receiver appointed by the supreme court of the State of New York city and county of New York. He also had the additional claim of being the assignee of all demands against the United States on the part of

83 one Mitchell, the assignment being executed by Mitchell for the purpose of enabling the claimant to more effectually perform the duties of his receivership under his appointment by the supreme court of New York. Weldon, J., delivering the opinion in the Court of Claims, says: "It may be that the personal assignment by Mitchell to claimant, it being for the indebtedness of the United States only, would not have the effect to transfer the claim to him, but his appointment as receiver under the order of the court has, in our opinion, that effect. It was held in the case of *Erwin vs. The United States*, 92 U. S. R., 392, that the act of Congress of February 26, 1853, to prevent frauds upon the Treasury of the United States, which was the subject of consideration in the *Gillis* case, applies only to the voluntary assignment of demands against the Government. It does not embrace cases where there has been a transfer of title by operation of law. The passing of claims to heirs and devisees, or assignees in bankruptcy, are not within the evils at which the statute aimed, nor does the construction given by this court deny to such parties a standing in the Court of Claims."

The conclusion reached from these authorities is that the statute does not prohibit nor interfere with assignments in bankruptcy, nor general assignments for the benefit of creditors, nor assignments decreed by a court of competent jurisdiction between parties for the benefit of the creditors of the person or estate of the claimant, nor to assignments by operation of law, as recognized and enforced by the various courts of competent jurisdiction in the

84 several States of the Union; besides, this interpretation of the statute is entirely consonant and in furtherance of justice. The only case relied upon by defendants is that of *St. Paul and Duluth Railroad Company vs. United States*, 112 U. S., 733. An examination of the case will show that all that was decided in that case was that the voluntary transfer of a claim against the United States for compensation to a railroad company for carrying the mail, made to another company by way of mortgage, does not fall within the principles of exceptions to the statute, such as an assignment by operation of law or a voluntary assignment for the benefit of creditors. The court said in that case in effect that the fact that the mortgage was fore-

closed by judicial action did not constitute an assignment by operation of law. This case is no authority to sustain the point that the receiver of the property and things in action of a debtor for appropriation to the payment of debts, deriving his authority from a court of competent jurisdiction, does not take, by virtue of an assignment by operation of law, a claim against the United States.

The conclusion reached is that the order of the chancellor overruling the pleas must be affirmed with costs.

85 [Endorsed:] New Jersey court of errors and appeals. March term, 1896. Between Rodman M. Price *et als.*, appellants, and Ann M. Forrest, administratrix of Samuel Forrest, deceased, *et al.*, appellees. Opinion — Lippincott, J. Filed Dec. 2, 1896. Henry C. Kelsey, clerk.

86 Court of Errors and Appeals of New Jersey.

RODMAN M. PRICE ET ALS., Appellants,

vs.

ANNA M. FORREST, Administratrix, &c., *et als.*, Respondents. }

On appeal from the decree of the court of chancery.

McGee, Bedle & Bedle, for appellants.

Cortlandt & Wayne Parker, for respondents.

The opinion of the court was delivered by—

LIPPINCOTT, J.:

This appeal from the final decree of the court of chancery in this cause brings up for decision the rights of the parties under the act of Congress set out in the pleadings and under section 3477 of the Revised Statutes of the United States.

These questions having been passed upon in the opinion of this court on the appeal from the decree of the chancellor overruling the pleas of the defendants in this cause, 35 Atlantic Reporter, 1075, the decree now appealed from, for the reasons there given, must be affirmed with costs.

"Filed Apr. 22, 1897.

GEORGE WURTS, Clerk."

87 [Endorsed:] New Jersey court of errors & appeals, November term, 1896. Between Rodman M. Price *et als.*, appellants, *vs.* Anna M. Forrest, adm'x, *et als.*, respondents. Opinion. Filed April 22, 1897. George Wurts, clerk.

88 Court of Errors & Appeals in the Last Resort in All Causes.

Between—

RODMAN M. PRICE & ALS., Appellants,	} On Appeal from Chancery on Final Decree.
and	
ANNA M. FORREST, Administratrix of	
Samuel Forrest, Dec'd; Charles	
Borcherling, & als., Respondents.	

This cause having come on to be heard at the November term of this court last past, and the same having been argued by Mr. Flavel McGee, of counsel for the appellants, and Mr. Cortlandt Parker, of counsel for the respondents, and the matters involved having been duly considered by the court, it is now, on this eleventh day of January, one thousand eight hundred and ninety-seven, on motion of Cortlandt & Wayne Parker, solicitors & of counsel for the respondents, ordered, adjudged, and decreed that the decree of the chancellor, from which appeal to this court was taken, be, and the same is hereby, in all things affirmed, with costs, to be taxed, and that the record be remitted to the court of chancery to proceed therein and therewith according to law.

Endorsed : " Filed Jan. 11, 1897. Henry C. Kelsey, clerk."

89 [Endorsed :] Court of errors & appeals. Between Anne M. Forrest & als., respondents, and Rodman M. Price & als., appellants. Final decree. Cortlandt & Wayne Parker, solicitors of respondents. " Filed Jan. 11, 1897. Henry C. Kelsey, clerk."

90 Supreme Court of the United States.

RODMAN M. PRICE, MADELINE PRICE, GOUVERNEUR PRICE,	}
Francis Price, and E. Trenchard Price, Plaintiffs in Error,	
vs.	
ANNA M. FORREST and CHARLES BORCHERLING, Defendants in	}
Error.	

Know all men by these presents that we, Rodman M. Price, of Brooklyn, New York, and Anderson Price, of Rutherford, Bergen county, New Jersey, are held and firmly bound unto Anna M. Forrest and Charles Borchering in the sum of five hundred dollars, to be paid to the said Anna M. Forrest and Charles Borchering, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this seventh day of April, A. D. one thousand eight hundred and ninety-seven.

Whereas lately, at a term of the court of errors and appeals in the last resort in all causes in and for the State of New Jersey, in a suit depending in said court between Anna M. Forrest and Charles

91 Borchering, complainants and respondents, and Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price, and E. Trenchard Price, defendants and appellants, judgment was rendered against the said Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price, and E. Trenchard Price, appellants, and the said Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price, and E. Trenchard Price having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Anna M. Forrest and Charles Borchering, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, the sixth day of May next:

Now, the condition of the above obligation is such that if the said Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price, and E. Trenchard Price shall prosecute their said writ of error to effect and answer all costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain of full force and virtue.

RODMAN M. PRICE. [SEAL.]
ANDERSON PRICE. [SEAL.]

Sealed and delivered in the presence of—
KENNETH FOWLER.

92 STATE OF NEW JERSEY, }
County of Bergen, } ss:

Anderson Price, of full age, being duly sworn, on his oath saith that he owns real estate in Rutherford, Bergen county, New Jersey, worth upwards of one thousand dollars over and above all incumbrances and over and above all his just debts and liabilities.

ANDERSON PRICE.

Sworn and subscribed this ninth day of April, 1897, before me—
FRANCIS H. MCGEE,
A Notary Public of New Jersey.

93 [Endorsed:] Supreme Court of the United States. Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price, and E. Trenchard Price, plaintiffs in error, vs. Anna M. Forrest and Charles Borchering, defendants in error. Defendants' bond for costs. "Filed April 10, 1897. George Wurts, clerk." Approved by Alex. T. McGill, chancellor, presiding judge of the court of errors and appeals in the last resort in all causes of New Jersey.

94 STATE OF NEW JERSEY, }
Department of State. }

I, George Wurts, secretary of state of the State of New Jersey and *ex officio* clerk of the court of errors and appeals in the last resort in all causes in and for the State of New Jersey, do hereby certify that the foregoing is a full, true, and complete copy of the record in the case of Anna M. Forrest and Charles Borchering, complainants

and respondents, and Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price, and E. Trenchard Price, defendants and appellants, and of the opinions filed in the cause, and of the assignment of errors and all proceedings in the cause, as the same remains on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the official seal of said court this 22nd day of April, A. D. 1897.

[Seal of the Secretary of the State of New Jersey.]

GEORGE WURTS,
*Secretary of State and ex Officio Clerk of the
Court of Errors and Appeals.*

95 Supreme Court of the United States.

RODMAN M. PRICE, MADELINE PRICE, GOV- erneur Price, Francis Price, and E. Trench- ard Price, Plaintiffs in Error, <i>against</i>	} Statement of Errors.
ANNA M. FORREST and CHARLES BORCHER- ling, Defendants in Error.	

The plaintiffs in error, in accordance with section nine of rule ten of the rules of the Supreme Court of the United States, hereby state :

I.

That they intend to rely on each of the errors alleged in the assignment of errors returned with the record and now on file in this court in this cause.

II.

That the parts of the record which they think necessary for the consideration thereof are as follows :

1. The bill for revivor and relief.
2. The order of the chancellor for an injunction on the bill.
3. The pleas of Madeline Price, Gouverneur Price, Francis Price, Rodman M. Price, and E. Trenchard Price to said bill, together with the schedule thereto annexed, which consists of an opinion by Caleb Cushing, Attorney General of the United States, to the Secretary of the Navy, James C. Dobbin, dated March 12th, 1854, and the affidavit and certificate attached to said pleas.

There were two of these pleas, one filed by Madeline Price and Gouverneur Price, and one by Francis Price, Rodman M. Price, and E. Trenchard Price, which were identical in statement, and only one of which need be printed, with its schedules, affidavits, and certificate.

4. The decree of the chancellor of New Jersey, Alexander T. McGill, overruling the pleas with costs.

5. The notice of appeal to the court of errors and appeals of New Jersey and certificate thereto annexed.

6. The petition of appeal to the same court, with the acknowledgment of service and memorandum of joinder in appeal.

7. The final decree of the court of errors and appeals of New Jersey on that appeal.

8. The decree upon remittitur on that appeal, dated June nineteenth, 1896.

9. The answer of Madeline Price, Gouverneur Price, Francis Price, Rodman M. Price, and E. Trenchard Price to the bill for revivor and relief, together with the schedule thereto annexed, which schedule consists of the same letter of the Attorney General of the United States, originally annexed to the plea above mentioned, and which letter, instead of being printed in full, may be referred to as printed at length in the schedule annexed to the plea.

10. The decree of the chancellor on bill and answer; which decree is dated the 25th day of June, 1896, and was filed the 30th day of August, 1896.

11. The appeal from this decree, with its certificate.

12. The petition of appeal to the court of errors and appeals of New Jersey from this last-named decree.

13. The answer of the respondents, Anna M. Forrest and Charles Borchering, to this last-named petition of appeal.

14. The final decree of the court of errors and appeals of New Jersey on this last-named appeal; which decree bears date and was filed on the 11th of January, 1897, and is entitled "On remittitur from the court of errors and appeals in the last resort in all causes."

15. The opinion of the court of errors and appeals of New Jersey, pronounced by Judge Lippincott, on the appeal from the decree of the chancellor overruling the defendants' pleas.

16. The opinion of the court of errors and appeals of New Jersey on the appeal from the final decree of the chancellor in the cause.

17. The assignment of errors in the cause in this court.

FLAVEL McGEE,

Attorney for and of Counsel with the Plaintiffs in Error.

[Endorsed:] Supreme Court of the United States. Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price, and E. Trenchard Price, plaintiffs in error, against Anna M. Forrest and Charles Borchering, defendants in error. Plaintiffs' statement of errors relied on and parts of the record to be printed.

Flavel McGee, att'y for and of counsel with plaintiffs in error.

[Endorsed:] Case No. 16,576. Supreme Court U. S., October term, 1898. Term No., 105. Rodman M. Price *et al.*, P. E., vs. Anna M. Forrest *et al.* Statement of errors & designation of parts of record to be printed by P. E. Filed July 23, 1897.

101 Supreme Court of the United States.

RODMAN M. PRICE, MADELINE PRICE, GOUVERNEUR PRICE,
Francis Price, and E. Trenchard Price, Plaintiffs in Error,

against

ANNA M. FORREST and CHARLES BORCHERLING, Defendants in Error.

Service is hereby acknowledged of the statement of the plaintiffs in error of the errors on which they intend to rely, and the parts of the record which they think necessary for the consideration thereof in the above-entitled cause.

Dated July 22d, 1897.

CORTLANDT & WAYNE PARKER.

Attorneys for Def'd'ts in Error.

102 [Endorsed:] Supreme Court of the United States. Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price, and E. Trenchard Price, plaintiffs in error, against Anna M. Forrest and Charles Borchering, defendants in error. Acknowledgment of service of plaintiffs' statement of errors relied — and parts of the record for printer. Cortlandt & Wayne Parker. Flavel McGee, att'y for and of counsel with plaintiffs in error.

103 [Endorsed:] Case No. 16,576. Supreme Court U. S., October term, 1898. Term No., 105. Rodman M. Price *et al.*, P. E., *vs.* Anna M. Forrest *et al.* Proof of service of statement of errors and designation by P. E. of parts of record to be printed. Filed July 24, 1897.

Endorsed on cover : Case No. 16,576. New Jersey court of errors and appeals. Term No., 105. Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price, and E. Trenchard Price, plaintiffs in error, *vs.* Anna M. Forrest and Charles Borchertling. Filed April 30, 1897.